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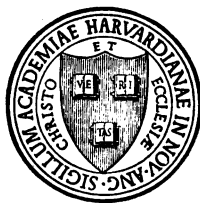
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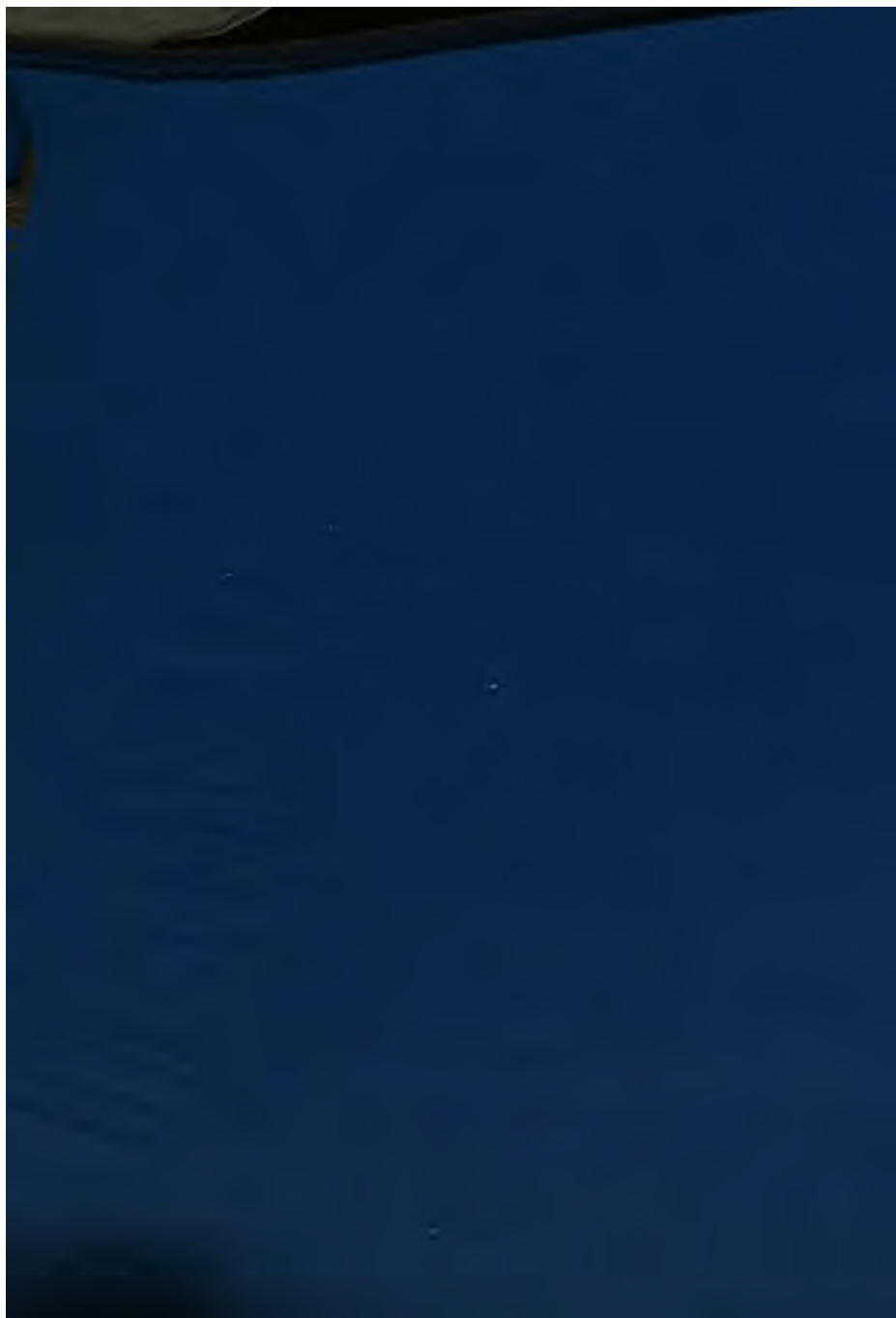
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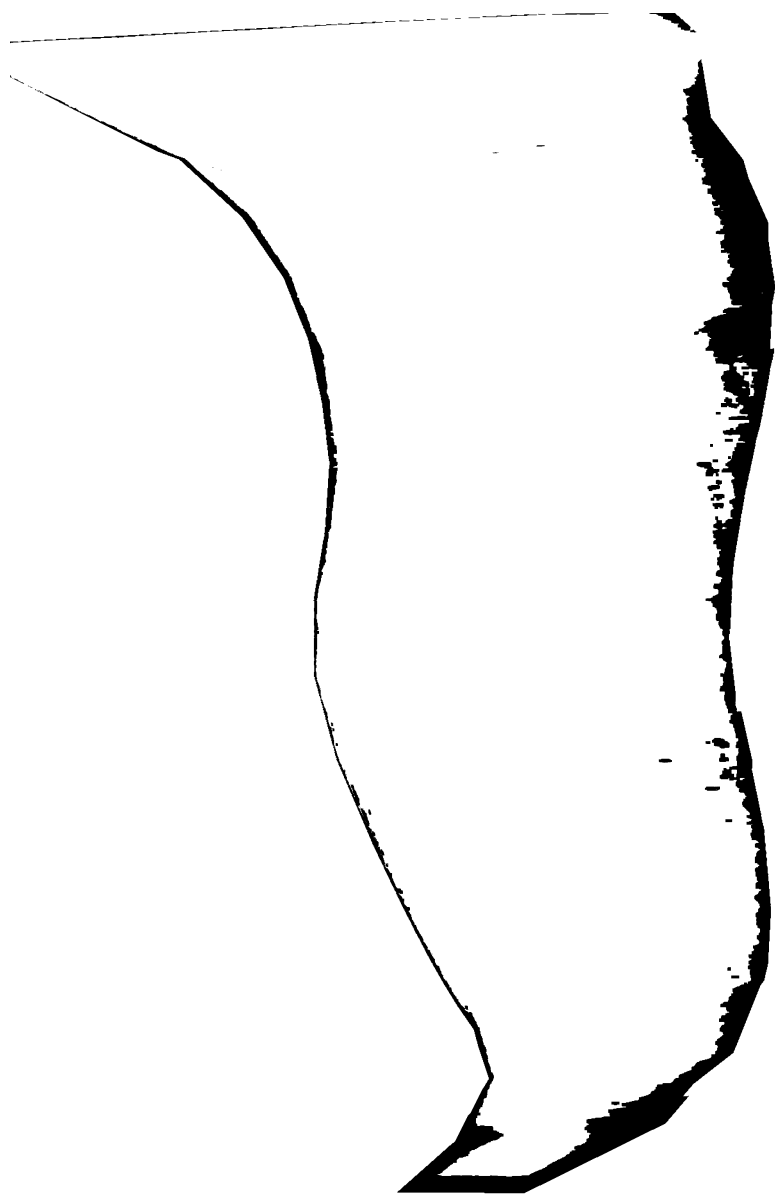


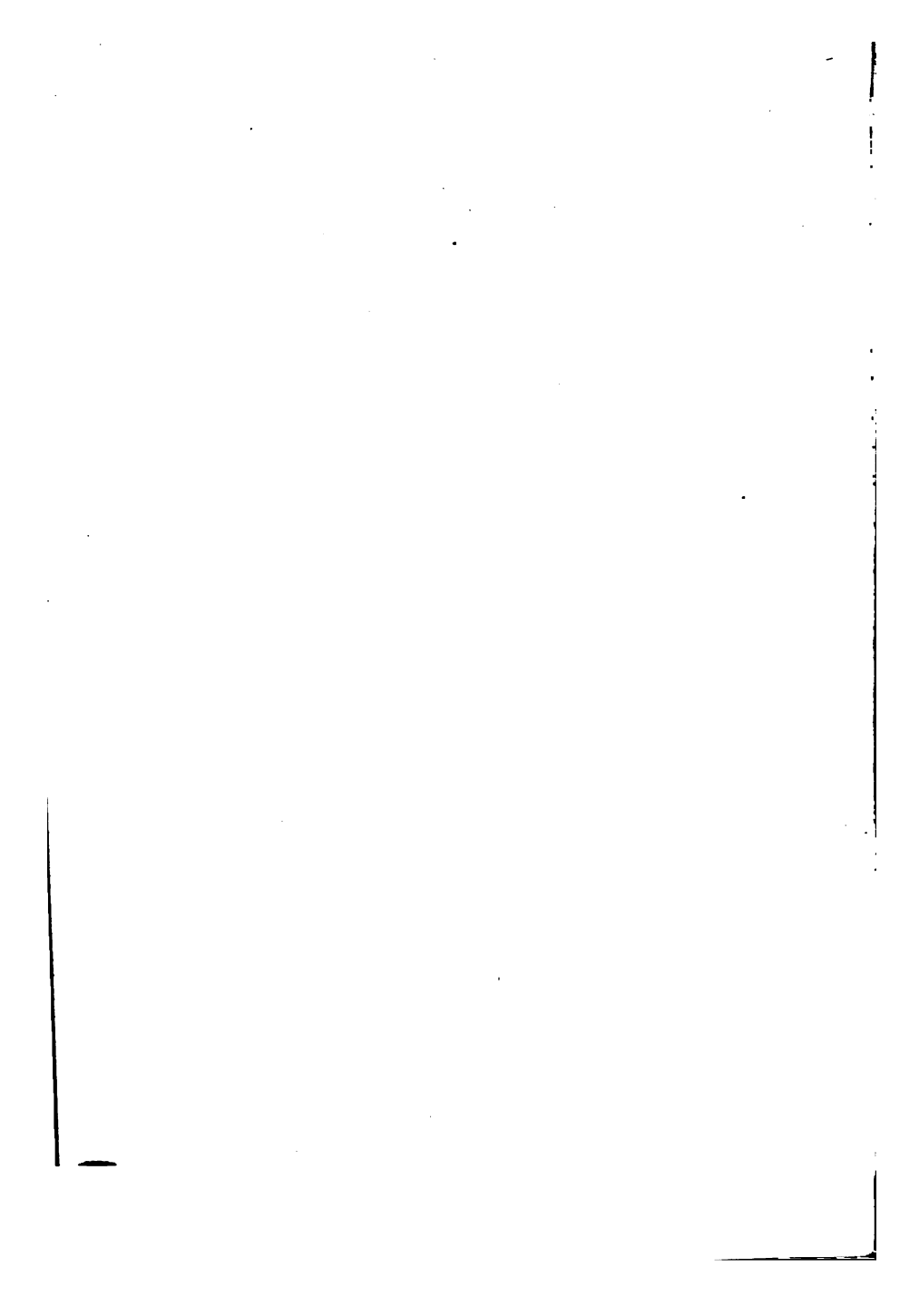
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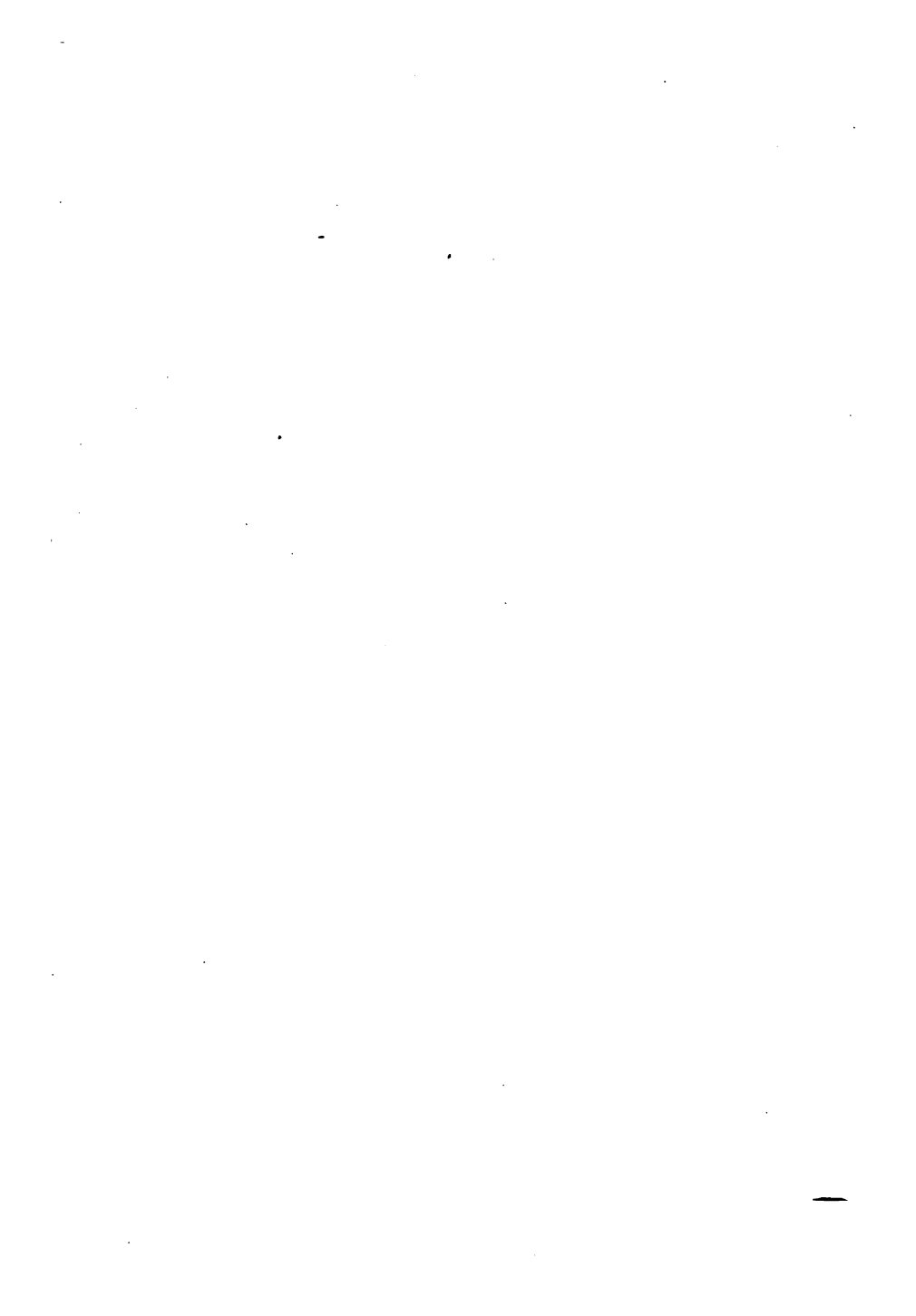
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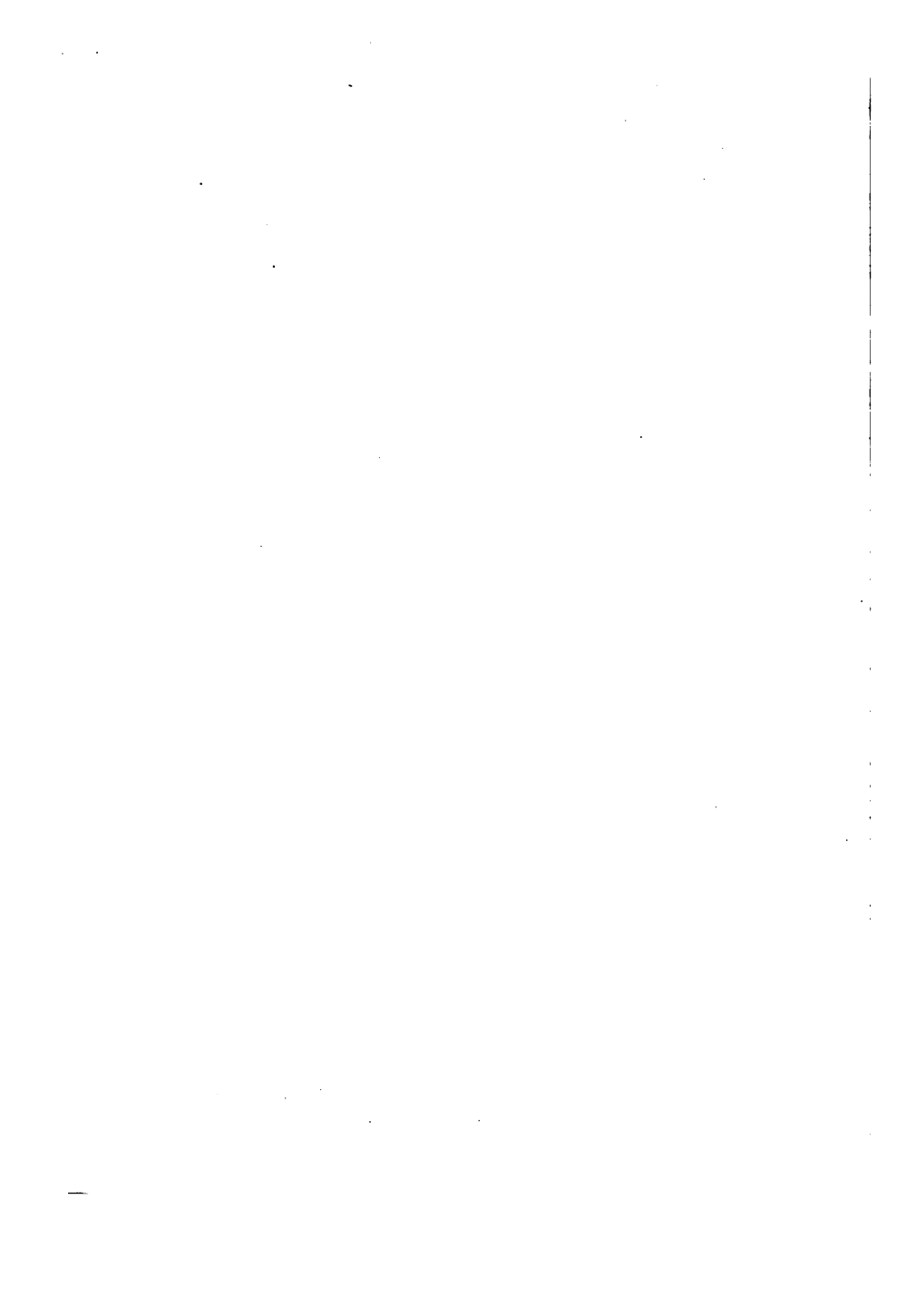
William C. Sanger











THE
Military Code

OF THE
STATE OF NEW YORK. — *Laws, Statutes, &c.*

Enacted May 4, 1893.

ALSO,
RULES AND ARTICLES OF WAR
AND KINDRED STATUTES,

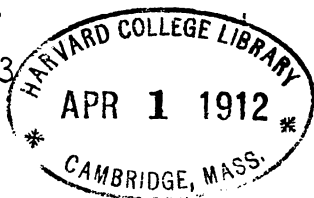
WITH GENERAL ORDERS AND DECISIONS RELATING THERETO, AMENDED TO
DATE, AS PUBLISHED BY THE ADJUTANT-GENERAL OF THE
UNITED STATES.



BANKS AND BROTHERS,
NEW YORK. 1893. ALBANY.

Wax 2958.66

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William C. Sangor.
Sangerfield, N.Y.

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THE MILITARY CODE.

AN ACT IN RELATION TO THE MILITIA, CONSTITUTING CHAPTER XVII OF THE GENERAL LAWS.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

CHAPTER XVII OF THE GENERAL LAWS.

THE MILITARY CODE.

- ARTICLE 1.** Persons subject to military duty and the enrollment thereof (§§ 1-5).
2. Organization of the national guard of the state of New York (§§ 10-18).
 3. Staff departments and duties (§§ 30-42).
 4. Election and appointment of commissioned and non-commissioned officers (§§ 50-61).
 5. Enlistment and transfer (§§ 70-72).
 6. Discharges of commissioned officers and enlisted men (§§ 80-96).
 7. Arms, uniforms and equipments (§§ 100-107).
 8. Pay and allowances (§§ 120-131).
 9. Military duty required (§§ 140-148).
 10. Invasion, insurrection and breaches of the peace (§§ 160-165).
 11. Armories (§§ 170-178).
 12. Rifle practice (§§ 190-195).
 13. Military courts (§§ 210-248).
 14. Miscellaneous provisions (§§ 260-265).
 15. Naval Militia (§§ 280-296).
Laws repealed (§ 300).
To take effect (§ 301).

ARTICLE I.

PERSONS SUBJECT TO MILITARY DUTY AND THE ENROLLMENT THEREOF.

SECTION 1. Short title.

2. Persons subject to military duty.

3. Enrollment.

4. Notice of enrollment ; exemption.

5. Examination of assessment-rolls and poll-lists.

SECTION 1. This chapter shall be known as the Military Code.

§ 2. **Persons subject to military duty.**— All able-bodied men, between the ages of eighteen and forty-five years, residents of the state and citizens thereof, or if of foreign birth who shall have declared their intention to become such citizens, shall be subject to military duty, if not exempted by the laws of the United States, excepting :

1. Persons exempted by any law of this state.

2. All persons in the army or navy or volunteer force of the United States, or who have been honorably discharged therefrom.

3. The members of any regularly organized fire or police department in any city, village or town, and exempt firemen who have served their full term in any fire company, but no member of the national guard shall be relieved from duty in the national guard by reason of his joining any such fire company or department.

4. All persons who have served five years in any capacity in the national guard of this state or in any one of the United States, and in the case of enlisted men, for the full term of their enlistment, provided they have served at least five years and been honorably discharged.

5. Justices and clerks of courts of record, registers of deeds, sheriffs, ministers of the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, light-house keepers, conductors and engineers of railways, seamen actually employed as such.

6. Idiots, lunatics, paupers, vagabonds, habitual drunkards and persons convicted of infamous crimes.

All such exempted persons, except those enumerated in subdivision six, shall be liable to military duty in case of war, insurrection, invasion, or imminent danger thereof.

§ 3. Enrollment.— Whenever the commander-in-chief deems it necessary, he may order an enrollment of all persons other than members of the national guard, liable to military duty, to be made by persons by him designated. Such enrollment shall state the name, residence, age and occupation of the persons enrolled. Four copies of such enrollment shall be made. One shall be retained by the enrolling officer, one shall be filed in the office of the town or city clerk in which the enrolled persons reside, one in the office of the clerk of the county in which the enrollment is made, and one in the adjutant-general's office.

§ 4. Notice of enrollment; exemption.— The officer making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him or leaving it with some person of suitable age and discretion, at his place of residence. All persons claiming exemption must, within fifteen days after receiving such notice, file a written statement of such exemption, verified by affidavit in the office of the county, town or city, clerk. Such clerk shall thereupon, if such person be exempt according to law, mark the word exempt opposite his name; and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the reserve militia of the state, and such clerk shall transmit a copy of such corrected roll to the adjutant-general. The commanding officer highest in rank in the national guard and the head of the fire and police departments in each city or town shall, whenever an enrollment is ordered, file in the office of such county, town or city clerk a certified list of the names of all persons in his command or department.

§ 5. Examination of assessment-rolls and poll-lists.— The assessors in each city, village, town or ward, in this state shall allow persons appointed to make such enrollment, at all proper times, to examine their assessment-rolls and take copies thereof, and the clerks of all counties, towns and cities, shall in like manner, at all proper times, allow such persons to examine and copy the poll-lists on file in their offices. All persons shall, upon the application of any person making such enrollment, give the name of and all other proper information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal

to give the information requested, to be recovered in the name of the people in any court, with costs. The officer making the enrollment shall, within ten days, report all persons who shall fail or neglect to give information to the adjutant-general of the state.

ARTICLE II.

ORGANIZATION OF THE NATIONAL GUARD OF THE STATE OF NEW YORK.

SECTION 10. Composition, organization and strength, of the national guard.

11. Discipline and exercise.
12. Appointment of officers until organized; general officers.
13. Composition of a regiment.
14. Composition of a battalion.
15. Company and battery organization.
16. Bands.
17. Provisional regiments and battalions.
18. Signal corps.

§ 10. Composition, organization and strength, of the national guard.—The uniformed militia of the state shall constitute and be known as the national guard of the state of New York, and shall consist of the present uniformed force, and such persons as shall enlist or be appointed or commissioned therein. The present brigades, regiments, battalions, troops, batteries, companies and signal corps, shall remain as now established, but the commander-in-chief shall have power to alter, divide, annex, consolidate, disband or reorganize, the same, and create new organizations, whenever, in his judgment, the efficiency of the state forces will be thereby increased, and he shall, at any time, have power to change the organization of regiments, battalions, troops, batteries, companies and signal corps, so as to conform to any organization, system of drill or instruction, now or hereafter adopted for the army of the United States, and for that purpose the number of officers and non-commissioned officers of any grade in regiments, battalions, troops, batteries, companies and signal corps, may be increased at the discretion of the commander-in-chief. The aggregate force of the national guard in time of peace, fully armed, uniformed and equipped, shall be not

less than ten and not over fifteen thousand enlisted men; but the commander-in-chief shall have power, in case of war, insurrection, invasion or imminent danger thereof, to increase the force beyond the said fifteen thousand, and organize the same as the exigencies of the service may require.

§ 11. **Discipline and exercise.** — The system of discipline and exercise of the national guard shall conform generally to that of the army of the United States as it is now, or may hereafter be prescribed by congress, and to provisions of the laws of the United States, except as otherwise provided in this chapter.

§ 12. **Appointment of officers until organized; general officers.** — The governor, as commander-in-chief of the national guard, and of the militia, is authorized and empowered to appoint officers in the first instance necessary to commence or complete any organization created under this chapter, but not sufficiently organized for an election. To each division there shall be one major-general, and to each brigade, one brigadier-general.

§ 13. **Composition of a regiment.** — A regiment of infantry, cavalry or artillery, shall consist of not less than eight nor more than twelve companies, troops or batteries, one colonel, one lieutenant-colonel, two majors, and a regimental staff to consist of three adjutants, one quartermaster, one commissary of subsistence, each of the grade of first lieutenant, one inspector of rifle practice of the grade of captain, one surgeon of the grade of major, two assistant surgeons each of the grade of captain, one chaplain of the grade of captain who shall be a regularly ordained minister of some religious denomination, three sergeant-majors, one quartermaster-sergeant, one commissary sergeant, one ordnance sergeant, one hospital steward, one band leader or trumpeter and one drum major, and two color bearers each of the grade of sergeant. To a regiment of twelve companies, troops or batteries, there shall be additional officers and non-commissioned officers as follows: one major, one adjutant of the grade of first lieutenant, and one sergeant-major. But should a regiment be reduced below the number of twelve companies, troops or batteries, by disbandment or otherwise, the commander-in-chief shall place on the list of supernumerary officers the major and adjutant, junior in rank, and one sergeant-major shall be reduced to the ranks or discharged in the discretion of the commanding officer.

§ 14. Composition of a battalion.— Each battalion, not a part of a regiment, shall consist of not more than six nor less than four companies, troops or batteries, one major, and a battalion staff of one adjutant, one quartermaster, one assistant surgeon, of the grade of captain, and one inspector of rifle practice, of the grade of first lieutenant, one sergeant-major and other non-commissioned staff officers as provided for a regiment; and whenever any regiment shall fall below the number of eight companies, troops or batteries, it may be reorganized as a battalion, and the commander-in-chief may, in his discretion, retain in command the field officers of the regiment so reduced to a battalion.

§ 15. Company, troop and battery, organization.— To each company, troop or battery, there shall be one captain, one first lieutenant and one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, eight corporals, two musicians, and thirty-one privates as a minimum, and eighty-four privates as a maximum. To each separate troop of cavalry and each battery of light artillery there shall be one captain, two first lieutenants, two second lieutenants, one first sergeant, one quartermaster-sergeant, one veterinary sergeant, one guidon sergeant, four sergeants, eight corporals, four artificers, two trumpeters and forty-eight privates as a minimum, and eighty-four privates as a maximum. To any battery of light artillery or separate troop, battery or company, the commander-in-chief may appoint and commission an assistant surgeon of the grade of first lieutenant.

§ 16. Bands.— The commanding officer of a regiment, or of a battalion not a part of a regiment, may organize and uniform, at the expense of the regiment or battalion, a band of musicians to be under his direction and command, who, while on duty, shall be subject to all the laws and regulations for the government of the national guard, except that they shall not be mustered in as prescribed for enlisted men, and shall not be counted in the aggregate force, and such commanding officer may disband such band, whether now or hereafter established, and revoke the warrant of the band-leader.

§ 17. Provisional regiments and battalions.—The commander-in-chief may, at his discretion, organize provisional regiments or battalions, composed of separate companies, troops or batteries,

which shall conform to the provisions of this chapter for regiments and battalions, and the separate companies, composing the same shall continue to be entitled to the annual allowances provided by this chapter for separate companies, and any special privileges which may inure to them as such shall be in no way abridged.

§ 18. **Signal corps.**—The commander-in-chief may, in his discretion, organize signal corps. A signal corps shall consist of one signal officer of the grade of captain, and one assistant signal officer of the grade of first lieutenant, and not to exceed forty non-commissioned officers and privates. And the commander-in-chief may appoint a chief signal officer, of the grade of major, who shall be the commanding officer of all the signal corps of the state.

The number of non-commissioned officers of each corps shall not exceed four signal sergeants and eight signal corporals.

ARTICLE III.

STAFF DEPARTMENTS AND DUTIES OF OFFICERS.

- SECTION 30.** Staff of commander-in-chief.
31. Division staff ; brigade staff.
 32. Chief assistant to act in the absence of the chief.
 33. Duties of adjutant-general.
 34. Duties of inspector-general.
 35. Duties of chief of ordnance.
 36. Duties of judge-advocate-general.
 37. Duties of other officers named.
 38. Bureau of records of war of rebellion.
 39. Completion of records.
 40. Preservation of records and relics.
 41. Free inspection of relics and books.
 42. Quarters in capitol.

§ 30. **Staff of commander-in-chief.**—The staff of the commander-in-chief shall consist of one adjutant-general of the grade of major-general, who shall be the chief of staff; one inspector-general, one commissary-general who shall be chief of ordnance, one judge-advocate-general who shall be a counselor-at-law of the supreme court of at least five years' standing, one surgeon-general who shall be a graduate of some incorporated school of medicine and of at least five years' practice, one chief of engineers

who shall have been educated as an engineer, one chief of artillery, one quartermaster-general, one paymaster-general, one commissary-general of subsistence and one general inspector of rifle practice, each of the grade of brigadier-general; six aides-de-camp each of the grade of colonel, and one military secretary, of the grade of colonel. Upon the recommendation of the chiefs of the staff departments, the commander-in-chief may appoint such assistants of such grade, not above that of colonel, and such store-keepers and clerks, with such pay, as in his judgment may be necessary. The officers composing the staff of the commander-in-chief, their assistants, and the staff officers of divisions and brigades, shall constitute the general staff of the state.

§ 31. **Division staff; brigade staff.**—In the staff departments there shall be to each division one assistant adjutant-general of the grade of colonel who shall be the chief of the division staff; one inspector, one engineer, one judge-advocate, one surgeon, one chief of artillery, one ordnance officer, one quartermaster, one commissary of subsistence, and one inspector of rifle practice, each of the grade of lieutenant-colonel, and as the personal staff of the division general, three aides-de-camp of the grade of major. To each brigade there shall be one assistant adjutant-general of the grade of lieutenant-colonel who shall be the chief of the brigade staff; one inspector, one engineer, one judge-advocate, one surgeon, one ordnance officer, one quartermaster, one commissary of subsistence and one inspector of rifle practice, each of the grade of major; and as the personal staff of the brigadier-general two aides-de-camp, of the grade of captain.

§ 32. **Chief assistant to act in the absence of the chief.**—In the absence of the chief of any staff department, from the city where his headquarters are located, or in case of his inability to perform his duties, his chief assistant shall have full power to perform all the duties pertaining to his office. Nothing in this section shall be so construed as to give validity to the acts of the assistant in case of the disapproval of his chief.

§ 33. **Duties of adjutant-general.**—The adjutant-general shall keep a register of all the officers of the military forces of the state, and keep in his office all records and papers required to be kept and filed therein, and make a full report on or before the fifth day of January in each year, to the commander-in-chief,

upon the condition of the national guard, and a detailed statement of all the expenditures in each of the departments during the preceding year. He shall be the auditor of military accounts, and all accounts or claims payable from the treasury of the state for military purposes, shall be regularly audited by him and approved by the governor, as commander-in-chief, before payment. He shall, at the expense of the state, from time to time, as may be necessary, cause the military code, articles of war and general regulations in force, to be printed and bound in proper and compact form, indexed and annotated and distributed, one copy to each commissioned officer, sheriff, clerk of board of supervisors and county treasurer in this state; and to each commissioned officer there shall be issued one copy of the general regulations and books of tactics, and to each headquarters one copy of the necessary text-books and the necessary copies of the annual report of the adjutant-general. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required for his office by the national guard, to carry into full effect the provisions of this chapter. All books and blanks so furnished shall be the property of the state, and the comptroller is hereby directed to draw his warrant on the treasurer of the state for the expenses so incurred.

The seal now used in the office of the adjutant-general shall continue to be the seal of his office, and shall be delivered to his successor in office.

§ 34. Duties of inspector-general.—The inspector-general shall personally, or through his assistants at general headquarters, or the division or brigade inspectors, inspect as often as may be deemed necessary by the commander-in-chief, every branch connected with the military service, including armories, arsenals, store-houses, camps, and military property, and report to the general headquarters the condition, discipline, drill and instruction of the national guard, the condition of military property belonging to the state and all matters pertaining to his department. He shall have the power to condemn all unserviceable property.

§ 35. Duties of chief of ordnance.—The chief of ordnance shall give a bond to the state in the sum of twenty-five thousand dollars, with two sureties, who shall justify in double the amount, to be approved by the commander-in-chief, for the faithful dis-

charge of the duties of his office. He shall keep in good repair the arsenals, magazines and armories belonging to the state, subject to the provisions of this section. When ordinary repairs, not exceeding one hundred dollars in cost, are necessary, the officer in charge of the building shall report what is required to be done, with the probable cost thereof, to the chief of ordnance, and upon his approval, cause the repairs to be made, payment for which shall be made only upon the certification of such officer that such repairs have been properly performed, and that the bills therefor are reasonable and just. When repairs, the cost of which will amount to one hundred dollars and less than five hundred dollars, are required, a full statement of the necessity thereof must be made by the officer in charge to the chief of ordnance, who shall cause estimates of the cost thereof to be prepared and submitted to him for his acceptance, by two or more parties, and shall cause the work to be done under a contract entered into for that purpose with the approval of the adjutant-general. During and upon the completion of the work it shall be inspected by the inspector-general or an officer of his department, and payment thereof shall not be made until it appears by the certificate of such officer that such work has been properly performed according to the contract made. When repairs are to be made, the expenditures for which will exceed five hundred dollars, advertisements for proposals shall be made, bids received and contracts regularly entered into with the approval of the adjutant-general. During the progress of the work the inspector-general shall detail a proper person who shall be required from time to time to visit the building and satisfy himself that the contract is being faithfully carried out. Upon the completion of the repairs, the work shall be inspected by the inspector-general or an officer of his department, and payment therefor shall not be made until it appears by the certificate of such officer that such work has been properly performed according to the contract made.

All bills for work done on any of the arsenals or armories of the state exceeding ten dollars, must be verified by affidavit setting forth that the work has been properly performed and that the amount charged has been reasonable and just.

Copies of all contracts and agreements made for the repair or alteration of arsenals or armories shall be immediately filed in the office of the adjutant-general. The chief of ordnance shall

attend to the safe-keeping and repairing of the ordnance, arms, accoutrements and all other military property in his charge belonging to the state, and shall appoint the necessary keepers to take charge thereof. All military property which has been condemned or which, after a proper inspection thereof by a board of survey ordered by the commander-in-chief, and upon a report of such board shall be deemed unsuitable for the use of the state, shall, under the direction of the commander-in-chief, be disposed of by the chief of ordnance at public auction, after suitable advertisement of the sale, daily, for ten days, in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the commander-in-chief. The officer making such sale shall bid in the property or suspend the sale whenever, in his opinion, better prices may or should be obtained. The chief of ordnance shall, from time to time, render a just and true account of the sales made by him, with all convenient speed, to the commander-in-chief, and shall expend the proceeds of the same in the purchase of clothing, arms, ammunition and other military property, as the commander-in-chief may direct. He shall report, annually, to the commander-in-chief, a statement in detail, showing the actual condition and disposition of all the clothing, ordnance, arms, ammunition and other military property, in his charge. He shall keep a just and true account of all the expenses necessarily incurred in and about his department, which shall include all expenses for the transportation of troops, for transportation to and from the arsenals, magazines and armories, of all ordnance, arms, ammunition, clothing, camp and garrison equipage or other military property, and the same shall be audited and paid in the same manner as other military accounts are audited and paid. The chief of ordnance shall issue, for the use of the national guard, such military property as the commander-in-chief shall direct, and, under the direction of the commander-in-chief, he may make purchases for that purpose. No military property belonging to the state shall be issued to persons or organizations other than those belonging to the national guard or the naval militia. The comptroller shall draw his warrant upon the treasurer, on the certificate of the adjutant-general, approved by the commander-in-chief, for such sums as shall,

from time to time be expended for the purchase or manufacture of clothing, arms, equipments and other military property.

§ 36. Duties of judge-advocate-general.—The judge-advocate-general, as chief of his department, is charged with the supervision, care and management of all matters relating to the administration of justice among the military forces of the state. He shall diligently scrutinize and examine the proceedings of all courts-martial, and report thereon for the information of the commander-in-chief. Under the orders of the commander-in-chief the judge-advocate-general shall act as judge-advocate at any court-martial where the public interests shall require his attendance. He shall be the legal adviser of the several staff departments, upon all legal questions which may arise therein, and to him may be referred for supervision all contracts, agreements or other instruments, to be drawn or executed in the course of the business of such departments.

§ 37. Duties of other officers named.—The surgeon-general, the chief of engineers, the chief of artillery, the quartermaster-general, the paymaster-general, the commissary-general of subsistence and the general inspector of rifle practice, shall perform the duties pertaining to their respective offices, subject to the provisions of this chapter, and to such rules and regulations as may be prescribed, and to such orders as may be issued, by the commander-in-chief for their government and instruction. All surgeons and assistant surgeons shall be graduates of some legally incorporated school of medicine, and shall be commissioned by the governor on the recommendation of the surgeon-general.

§ 38. Bureau of records of war of rebellion.—The adjutant-general shall establish and maintain as part of his office, a bureau of records of the war of the rebellion, in which all records in his office relating to such war, and the records and relics of the bureau of military statistics shall be united and kept. He shall be the custodian of all such records, relics, colors, standards and battle flags of New York volunteers now the property of the state or in its possession, or which the state may hereafter acquire or become possessed of.

§ 39. Completion of records.—The adjutant-general, by all reasonable ways and means, shall complete such records, and gather from every available source such colors, standards and

battle flags as were borne by New York state troops in the war of the rebellion, and such statistics and historical information and relics as may serve to perpetuate the memory and heroic deeds of the soldiers of the state and to keep and carefully preserve the same in such bureau. The adjutant-general is authorized to request and accept from incorporated associations of veterans of the different regiments, statements and information, duly authenticated by them, descriptive of their colors, standards and battle flags, together with the number and class of arms of the regiment, the date and place of muster into the service of the state and also into the service of the United States, the period of service, and the date and place of muster out, the date of departure for the seat of war, the various battles and engagements and places of service, including garrison duty, the time of joining brigades, corps and armies, with the time and nature of the service, the names of colonels of such regiments, the names of those killed in action, including those who died of wounds, and the names of those who died of disease during their period of service. He is authorized to ask the co-operation and assistance of the adjutant-general of the United States, and of the city, county and town authorities and officials, and of the Grand Army of the Republic, the Military order of the Loyal Legion and of organizations and persons in the state of New York and elsewhere in the collection of such other information, relics, memorials and battle flags as is contemplated by this article, in order to make as complete as possible the records, history and statistics of the patriotic service of the volunteer soldiers of the state during the war of the rebellion.

§ 40. **Preservation of records and relics.**— The adjutant-general is directed to transcribe and keep in books of record in such bureau the historical facts, information and statistics as provided in this article; and he is authorized to determine a convenient size for the volumes in which such statistics and historical data may be bound, and to request veteran associations and others proposing to supply such historical data and information to furnish the same upon printed or manuscript sheets of a uniform size to correspond with the size of such volumes.

He is authorized to provide locked and sealed cases with glass fronts, as nearly air tight as practicable, in which shall be kept and displayed the colors, standards and battle flags mentioned in

this article, and receive placards in duplicate, which incorporated regimental veteran associations are privileged and empowered to furnish, and upon which shall be inscribed synopses of the historical information and statistics herein provided to be furnished to such bureau by regimental veteran associations, or failing to receive such data and information from such veteran associations, for the preparation of such placards, he may utilize the authentic information which he may obtain from other sources, as herein provided, which placards shall be uniform in size and color, and shall be attached to or conspicuously placed in proximity to the colors, standards and battle flags to which they refer. If any placard or inscription shall be lost, destroyed or removed, the adjutant-general shall at once replace it by duplicate of the original on file.

§ 41. **Free inspection of records and relics.**— The books, records and other property and relics deposited in such bureau shall be open to free inspection and use, except the use of the colors, standards and battle flags, at such reasonable hours and under such regulations as the adjutant-general may determine. No battle flag, book or any property placed in such bureau for the purpose of this article, shall be removed therefrom, or from the immediate custody and control of the adjutant-general, without an act of the legislature.

§ 42. **Quarters in capitol.**— The trustees of the capitol are authorized and directed to provide suitable and convenient quarters for the bureau of records whenever the adjutant-general shall require and make demand therefor, and to properly fit up and prepare the same for the safe-keeping of such records, books and property, and for the display of such colors, standards, battle flags and relics, which shall be known and maintained as the hall of military record. The several municipalities of the state may deposit their record books and papers relating to the war in the archives of the hall for safe-keeping, and transcripts therefrom shall be furnished on application by the chief officer of the municipality without cost to it. Officers or soldiers may deposit therein their discharge papers, descriptive lists, muster rolls or company or regimental books and papers for safe-keeping.

The interest arising from the investment of the funds contributed by towns, cities and individuals for the erection of a hall of military record, shall be devoted to the maintenance of the hall of military record provided in this section.

ARTICLE IV.

ELECTION AND APPOINTMENT OF COMMISSIONED AND NON-COMMISSIONED OFFICERS.

SECTION 50. Commissions. Examination by boards.

51. Appointment and terms of office of chiefs of staffs.
52. Appointment of major-generals, brigadier-generals, and their staffs.
53. Election or appointment of other officers and non-commissioned officers.
54. Vacancies, how filled.
55. Serving of notices.
56. Conduct of election.
57. Acceptance of office, new election; certificate of proceedings.
58. Appeal to commander-in-chief.
59. Oath of office.
60. Officers of provisional organizations.
61. Brevet commissions.

§ 50. **Commissions : examination by boards.**—All officers shall be commissioned by the commander-in chief, and no person shall be commissioned in the militia or national guard of this state, unless he is a citizen of the United States, of eighteen years of age or upward. No commission shall hereafter be issued to any officer in the national guard, save to general officers, and the staff of the commander-in-chief, until the officer elected or appointed shall have passed a satisfactory examination before a board as to his knowledge of military affairs proportionate to the office to be held, his general knowledge and his fitness for the service. If such person shall be adjudged unqualified for such office, another person shall, after due notice of such adverse decision, be elected or appointed. The commander-in-chief shall appoint or cause to be appointed all such examining boards, to consist of not less than three members, who shall have the same power to compel the attendance of witnesses, administer oaths and take testimony, as is possessed by general courts-martial.

No person shall be eligible for election or appointment to office in the national guard for the period of one year after he shall have been reported adversely by an examining board.

§ 51. **Appointment and terms of office of chiefs of staff.**—The chiefs of the staff departments, the aides-de-camp and the military secretary, of the commander-in-chief, except the chief of

ordnance, shall be appointed by the governor, and their commissions shall expire with the term for which the governor appointing them shall have been elected.

The chief of ordnance shall be appointed by the governor, with the consent of the senate, and shall hold office for the term of two years. The assistants in the several departments, including military store-keepers, shall be appointed by the commander-in-chief upon the recommendation of the chief of the department, and shall hold their commission subject to the pleasure of the commander-in-chief.

§ 52. Appointment of major-generals, brigadier-generals and their staffs.— All major-generals, except the adjutant-general, shall be appointed by the governor, with the consent of the senate. Brigadier-generals shall be appointed by the governor, or may, whenever the governor shall so determine and direct, be chosen by the field officers of the brigade and the commanding officers of troops, batteries and companies, not a part of a regiment or battalion, but in such brigade. Staff and signal corps officers shall be appointed by the commander-in-chief.

Major-generals, brigadier-generals, and commanding officers of regiments, and battalions not a part of a regiment, may nominate candidates to fill vacancies in the staffs and signal corps of their respective divisions, brigades, regiments or battalions. No person shall be eligible for appointment or election as a major-general or brigadier-general, unless he has served five years in the national guard; but service in the regular or volunteer forces of the United States shall be counted as service in the national guard.

No person shall be eligible for appointment as a staff officer of any division, brigade, regiment, or battalion not a part of a regiment, except judge-advocates, medical officers and chaplains, unless he shall have served at least one year in the national guard of this state, or in the regular or volunteer forces of the United States.

§ 53. Election or appointment of other officers and non-commissioned officers.— Except as otherwise provided in this chapter, field officers of regiments and battalions not a part of a regiment, shall be chosen by the field and company, troop or battery, officers of their respective regiments or battalions. No person shall be eligible to the office of colonel who has not served at least three years, either in the national guard, or in the

regular or volunteer forces of the United States, or three years in the aggregate, in two or more of such branches of the military service. Captains and lieutenants of troops, batteries and companies, shall be chosen by the written or printed votes of the officers and enlisted men of the troops, batteries and companies, respectively.

Commanding officers of regiments, and battalions not a part of a regiment, shall appoint and warrant the non-commissioned staff officers of their respective regiments and battalions, and they shall warrant the non-commissioned officers of the companies, troops and batteries, of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, troops and batteries, respectively.

In troops, batteries and companies, not a part of a regiment or battalion, and in signal corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company or signal corps. All non-commissioned staff officers, excepting hospital stewards, trumpeters, drum-majors, band-leaders and veterinary sergeants, who may be civilians, must, before appointment, be duly enlisted men, belonging to some company of the organization. Upon receiving a written nomination, pursuant to this section, from the commanding officer of a troop, battery, company or signal corps, the officer authorized to issue the warrant thereon, shall require the person nominated to be examined with respect to his qualifications and fitness to fill the office to which he has been nominated, by a board of examiners, consisting of from one to three commissioned officers, to be appointed by him; and if on the report of such board he shall adjudge the person nominated to be qualified for the office, he shall issue a warrant for him; otherwise a new nomination shall be made.

§ 54. **Vacancies, how filled.** — A vacancy in the office of brigadier-general of any organized brigade, may be filled by the commander-in-chief by appointment, or he may issue an order for an election to fill the vacancy, and designate a major-general, or other proper officer, to preside at such election.

The officer so designated shall cause a written or printed notice to be served on each of the field officers and the commanding

officers of the troops, batteries and companies, not a part of a regiment or battalion, of the brigade in which the vacancy exists, at least ten days previous to the election, specifying the time and place of holding such election.

If a vacancy exists in the office of any field officer in any regiment, or battalion not part of a regiment, the commanding officer of the brigade, to which such regiment or battalion belongs, shall cause a written or printed notice to be served on the field and company officers in such regiment or battalion for an election to fill the vacancy at least five days before such election shall take place, and shall preside or designate some other proper officer to preside thereat.

If a vacancy exists in the office of captain or lieutenant in any organized troop, battery or company, the commanding officer of the regiment or battalion to which such troop, battery or company belongs or in the case of a troop, battery or company, not a part of a regiment or battalion, the commanding officer of the brigade to which such troop, battery or company is attached, shall cause a written or printed notice for an election to fill the vacancy to be served on the members of such troop, battery or company, at least three days before the election shall take place, and shall preside or designate some other proper officer to preside thereat.

§ 55. **Serving of notices.**— All notices for any election shall be served on the persons entitled to vote thereat in the same manner as enlisted men are warned to attend a parade, and shall specify the time and place of holding such election. The officer issuing the notice shall designate some proper person or persons to serve the same or to direct such service; and the person so designated shall make a return of the persons notified, and of the manner of the service. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor; if by a non-commissioned officer, by the oath of the person making such service. The oath may be administered by any person authorized to take the acknowledgment of deeds or by the officer issuing the notice.

§ 56. **Conduct of election.**— The officer causing the notice to be given for any election, shall attend or designate some other proper officer to attend at the time and place of holding such election. He, or the officer designated by him, shall organize

the meeting and preside thereat, and may, for sufficient cause, adjourn the same from time to time, and if three such meetings result in no choice, the vacancy may be filled by the commander-in-chief. If the officer causing the notices to be given or the proper officer designated by him, shall not attend the meeting for the election, then the officer of the highest rank present shall preside at such meeting. The officer issuing such notices shall cause the proper evidence of service of such notices on all the electors to be delivered to the presiding officer. At meetings for the election of troop, battery or company officers, the roll, carefully revised, shall in like manner, be delivered with such evidence. If it shall happen, at any election for commissioned officers, that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting and cause such notice to be given; but the presence of a person entitled to vote at any election, shall be deemed a waiver of his right to take exception to the want of legal notice to him.

If any person offering to vote at any election shall be challenged as unqualified, by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged, the qualifications of an elector, and if he shall state himself to be duly qualified, and the challenge shall not be withdrawn, the presiding officer shall examine him under oath and determine as to his qualifications as such elector. A majority of the votes of all persons present, voting at an election, shall be necessary to a choice.

The presiding officer at any election for commissioned officers shall keep the polls open at least one hour after the time appointed for holding the same, unless all entitled to vote thereat shall have deposited their ballots prior to the expiration of that hour. He shall then publicly canvass the votes received from the electors for the officers to be elected, and shall forthwith declare the result and give notice to every person elected of his election.

§ 57. Acceptance of office ; new election ; certificate of proceedings.—If a person elected at any such election shall not, within ten days after being notified of his election, signify his acceptance to the presiding officer, he shall be considered as declining the office to which he shall have been chosen and a new election shall be held. If within such time he shall have

signified his acceptance, the record of the proceedings of the election shall be forwarded by the officer who presided at the election to general headquarters, in such manner as the commander-in-chief may direct.

§ 58. **Appeal to commander-in-chief.**—Every person thinking himself aggrieved by the proceedings at any election for a commissioned officer may appeal to the commander-in-chief, who shall determine such appeal, and in case it shall be necessary, order a new election.

The commander-in-chief may make such rules and regulations, relative to appeals, as he shall deem necessary and proper, to give full effect to the provisions of the constitution and of this chapter.

The commander-in-chief may direct, upon such an appeal, that testimony be taken before an officer designated by him for that purpose, who shall have the same power to administer oaths and issue subpoenas, and enforce obedience to the same as is possessed by general courts-martial.

§ 59. **Oath of office.**—Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall be personally notified that the same is held in readiness for him by any superior officer, take and subscribe the constitutional oath of office. In case of neglect or refusal to take and subscribe such oath within the time mentioned, he shall be deemed to have resigned such office and a new appointment shall be made or a new election shall be forthwith ordered to fill his place. Such oath shall be taken and subscribed before an officer authorized to take acknowledgments of deeds in this state, or some general or field officer who has taken it himself, and who is hereby authorized to administer the same.

§ 60. **Officers of provisional organizations.**—The commander-in-chief may, in his discretion, detail, or appoint and commission, the field and staff officers of provisional regiments and battalions organized under this chapter, and may fill the vacancies which may occur in such offices from time to time.

§ 61. **Brevet commissions.**—Brevet commissions, of a grade next higher than the ordinary or brevet commissions held by officers of the national guard, or of any organization duly organized under the laws of this state, may be conferred for a continuous term of service therein of not less than fifty years, or for gallant

and meritorious service therein, by the commander-in-chief, upon the recommendation of their superior commanding officers or of the adjutant-general. Such brevets shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States.

ARTICLE V.

ENLISTMENT AND TRANSFER.

SECTION 70. Who may enlist; term of service; re-enlistment.

71. Transfers.

72. Enlistment papers.

§ 70. Who may enlist ; term of service ; re-enlistment.—

Able-bodied men of good character, eighteen years of age and upwards, who can read and write, may be enlisted in the national guard in the first instance for a term of not less than five nor more than seven years, and on the expiration of that term they may be re-enlisted, either immediately or at any time thereafter, for terms of one or more years, at their option. No person above the age of forty-five years shall be enlisted or re-enlisted except by permission of the commanding officer of the brigade or division to which the organization is attached; nor any person under the age of twenty-one years, without the consent of his parent or guardian, nor any person who has been expelled or dishonorably discharged from any military organization of the state, unless such person shall first receive the written permission of the commanding officer of the organization from which he was expelled or discharged. Enlistment, as musicians between the ages of sixteen and twenty-one years may be made with the consent of parents or guardians. Every enlisted man shall continue to be held to duty, and shall retain rank and be eligible to promotion, after the expiration of his term of enlistment, or re-enlistment, until he is actually discharged.

When an organization is consolidated or disbanded, its enlisted men discharged by reason thereof, who shall thereafter re-enter the service, shall have allowed to them as part of their terms of service, the time already served.

§ 71. Transfers.—An enlisted man shall not leave one organization to join another unless duly transferred. On his own application an enlisted man — being first reduced to the ranks, if a

non-commissioned officer—may be transferred from one company, troop, battery or signal corps, to another organization in the same regiment, or battalion not a part of a regiment, by the commanding officer of the regiment, or battalion; from one organization to another in the same brigade, by the commanding officer of the brigade; and from one brigade to another by the commanding officer of the division or by the commander-in-chief.

§ 72. **Enlistment papers.**—Every person recruited for the national guard shall sign an enlistment paper, which shall be forwarded to the adjutant-general, of such form as may be prescribed by the commander-in-chief, which shall contain an oath of allegiance to the state and the United States. Such oath of allegiance shall be taken before a field officer, or the commanding officer of the troop, battery, company or signal corps. No person shall be considered as enlisted in the national guard until his enlistment paper has been approved by the commanding officer of the organization to which the troop, battery, company or signal corps, is attached.

ARTICLE VI.

DISCHARGES OF COMMISSIONED OFFICERS AND ENLISTED MEN.

SECTION 80. Discharge of commissioned officers.

81. Supernumerary officers.

82. Resignation or removal of officer.

83. Examination and discharge of officer.

84. Placing of officer on retired list.

85. Discharge of enlisted men; hearing; decision thereon.

86. Reduction of non-commissioned officers to the ranks.

§ 80. **Discharge of commissioned officers.**—Commissioned officers of the national guard, who shall have served therein for five years, shall, upon the acceptance of their resignations by the commander-in-chief, be granted a full and honorable discharge from service in the state forces, except in case of insurrection or invasion. They may be discharged, upon tender of their resignation or for physical disability, prior to the expiration of said term of five years, or at any time on sentence of a court-martial or upon a finding of an examining board, or for failure to appear before the same when ordered, or for absence without leave for a period of six months or more; but in such cases they shall not thereafter be exempt from jury duty. All officers discharged

from the service of the state shall receive a certificate of discharge in such form as the commander-in-chief shall direct.

§ 81. **Supernumerary officers.**—Commissioned officers rendered supernumerary by the consolidation, alteration or disbandment, of any organization, or in any other lawful manner, may be assigned by the commander-in-chief to active duty, and when on such active duty, they shall enjoy all the privileges, emoluments and immunities, to which commissioned officers of the same grade in the national guard on active duty are entitled, but they shall not be entitled to vote at elections at which elected officers of the same grade are entitled to vote. They shall take rank for the purposes of such assignment from the date thereof, and when elected or appointed to an office of the same grade in the national guard, they shall take rank from the date of such election or appointment.

§ 82. **Resignation or removal of officer.**—No officer shall be permitted to resign his commission who shall be under arrest, or returned to a military court for any deficiency or delinquency. No resignation shall be accepted unless the officer tendering the same shall furnish, to the adjutant-general, a certificate from the chief of ordnance, that he has delivered all books and other property of the state in his possession, to the officer authorized to receive the same, and that his accounts for money or public property are correct, and that he is not indebted to the state. No commissioned officer can be removed from office, unless by the senate on recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, or an examining board, or pursuant to law.

§ 83. **Examination and discharge of officer.**—The commander-in-chief may, whenever he may deem that the good of the service requires it, order any officer of the national guard before a board of examination, to consist of not less than three nor more than five general and field officers, which is hereby invested with the powers of courts of inquiry and courts-martial, and such board shall examine into the moral character, capacity and general fitness for the service, of such commissioned officer. If the findings of such board be unfavorable to such officer, and be approved by the commander-in-chief, he shall be discharged from the service. No officer whose rank or promotion would in any way be

affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case.

§ 84. **Placing of officer on retired list.**—Any commissioned officer who shall have served in the same grade for the continuous period of ten years, may, upon his own request, be placed upon the retired list and withdrawn from active service and command, by order of the commander-in-chief, and the vacancy thereby created shall be filled in the same manner as other vacancies.

Any commissioned officer who has become or shall hereafter become disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and command and placed on the retired list, and any commissioned officer who has become, or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged. Such retirement or discharge shall be by order of the commander-in-chief, and, in either case, shall be subject to the provisions of this section.

Before making such order, the commander-in-chief shall appoint a board of not less than three nor more than five commissioned officers, one of whom shall be of the medical staff, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent, from any cause, to perform military service, and whose case shall be referred to it by the commander-in-chief. No officer, whose rank or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts-martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the commander-in-chief, stating cause of incapacity, whether from disability, unfitness or incompetency, and if he approves such finding, such officer shall be placed on the retired list, or discharged, as provided in this article. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the

retired list or discharged by the action of such board, without having had a fair and full hearing before the board, if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of such board arising under this section, unless the officers designated by the commander-in-chief to be placed upon the retired list or discharged, shall within twenty days after being notified that they will be so retired or discharged, serve on the adjutant-general a notice in writing, that they demand a hearing and examination before such board.

§ 85. **Discharge of enlisted men ; hearing ; decision thereon.**—Whenever any enlisted man of the national guard shall have performed service therein for the term of his enlistment or re-enlistment, and shall have attended an average of sixty per centum of the drills and parades of his organization in each year, or if a non-commissioned staff officer, company quartermaster-sergeant, veterinary sergeant or musician, shall have performed his proper duties regularly, unless excused by proper authority, the commanding officer of the division, brigade, regiment, or battalion not a part of a regiment, to which he belongs, or in case of a troop, battery or company not a part of a regiment or battalion, or in case of a signal corps, the commanding officer of the division or brigade to which it is attached shall, upon the certificate of the commanding officer of his troop, battery, company or signal corps to that effect, and that he has turned into the proper officer all state, regimental and company property for which he is accountable, grant him a full and honorable discharge from further service in the state forces, except in time of insurrection or invasion. Discharges for physical disability shall be granted upon the certificate of the regimental or battalion surgeon, and in case of a troop, battery or company not a part of a regiment or battalion, or in case of a signal corps, of the assistant surgeon of such troop, battery or company, or of the surgeon of the division or brigade to which such troop, battery, company or signal corps, is attached. The commander-in-chief or the commanding officer of a division or brigade may, for sufficient reason, and in his discretion, discharge enlisted men under his command, with or without their consent, at any time, upon the recommendation of the commanding officer of the troop, battery, company, signal corps, regiment or battalion to which they belong, but no enlisted man shall be honorably discharged from ser-

vice, unless he produces the certificate of his immediate commanding officer that he has turned over or satisfactorily accounted for all property issued to him. No such discharge shall be granted by the commander-in-chief or any commanding officer of a division or brigade before the expiration of the term of the enlisted man, without his consent, until after he has had ten days' notice of the grounds for the recommendation of his discharge, and an opportunity to be heard and for explanation and defense before the commander-in-chief or the commanding officer of the division or brigade.

§ 86. **Reduction of non-commissioned officers to the ranks.**—Non-commissioned officers, if enlisted men, may be reduced to the ranks by the commanding officer of the organization to which they belong, or by sentence of a court-martial. Hospital stewards, band-leaders, trumpeters, drum-majors and veterinary sergeants, from civil life, may be summarily discharged. An enlisted man who cannot, after due diligence, be found, or who shall remove his residence from the state or to such a distance from the armory of his organization as to render it impracticable for him to properly perform military duty, or who shall be convicted of a felony, or who shall be expelled from his organization in accordance with by-laws lawfully adopted, may be dropped by order of the commanding officer of the division, brigade, regiment, or battalion not a part of a regiment. Any enlisted man dropped on account of removal may be taken up at any time within three years after such removal, or at any time thereafter upon his own application.

ARTICLE VII.

ARMS, UNIFORMS AND EQUIPMENTS.

- SECTION 100. Uniforms, equipments and supplies.
 101. State uniform; use of other uniform.
 102. Issue of uniforms.
 103. Inspection of uniforms before payment.
 104. Use of full dress and service uniforms.
 105. Responsibility of commanding officers for public property.
 106. Issue of property by commanding officers.
 107. Penalty for conversion of military property and wrongful wearing of uniform.

§ 100. **Uniforms; equipments and supplies.**—Every organization shall be provided, at the expense of the state, with such

uniforms, arms, equipments, colors, musical instruments, books of instruction and of record, blanks, camp and garrison equipage and military supplies as may be necessary for the proper performance of the duty required by this chapter. Commissioned officers shall provide themselves with the uniforms, arms and equipments lawfully prescribed or approved, and there shall be allowed to aid them in procuring the same, at the time of their original election or appointment as commissioned officers: to mounted officers, fifty dollars, and to all other officers, thirty dollars.

§ 101. **State uniform; use of other uniform.**— No modification of the state uniform shall be made without the authority of the commander-in-chief. In case a requisition is not made for the state uniform by the proper officer of any organization, or until such uniform is provided for any organization at the expense of the state, the uniform heretofore approved and now in use by such organization shall continue to be its lawful fatigue or service uniform; but nothing herein contained shall limit the time within which a requisition may be made.

§ 102. **Issue of uniforms.**— Every man duly enlisted shall be provided with the state uniform, unless the organization in which such man is enlisted has not been provided with such uniform at the expense of the state, or shall have determined through its board of officers or association authorized by this chapter to retain its present lawful uniform at its own expense.

§ 103. **Inspection of uniforms before payment.**— No payment shall be made for the cloth, material or manufacture, of uniforms under this article, until the cloth and material furnished and the uniform manufactured shall have been inspected by the inspector-general, or an officer of his department, nor unless the bills for such cloth and material and for the manufacture of such uniforms are accompanied by the certificate of the inspecting officer that they have been inspected by him and that they conform in all respects to the sample cloth and material and the pattern uniform deposited in the office of the chief of ordnance and acting quartermaster-general.

All uniforms, arms, equipments and other property, issued to organizations of the national guard, shall be and remain the property of the state of New York, and shall be accounted for on their annual property returns. The treasurer shall pay on

the warrant of the comptroller such sums as from time to time may become due for such property furnished under the provisions of this chapter, upon the audit of the adjutant-general and approval of the commander-in-chief.

§ 104. **Use of full dress and service uniforms.**— Each organization may wear at parades and reviews such full dress uniform as has been heretofore adopted and approved or may be hereafter approved by the commander-in-chief, but the state uniform as prescribed by the commander-in-chief, when issued to an organization, shall be worn at the annual inspection, at encampments and on duty ordered by the commander-in-chief, and in active service in case of insurrection, invasion or breaches of the peace, or imminent danger thereof.

§ 105. **Responsibility of officers for public property.**— All officers shall be responsible for the safe-keeping and return of all military property committed to their charge, but no such property shall be so issued unless a suitable armory or place of deposit shall be assigned, rented or erected.

§ 106. **Issue of property by commanding officers.**— Any officer who shall receive any military property from the state, for the use of his command, shall issue the same to his command as he shall deem proper, taking vouchers therefor. He shall require those to whom such property is issued to return it at such time and place as he shall order and direct. Anyone who shall neglect or refuse to comply with such order shall forfeit a sum not to exceed twice the cost of the military property he shall have received, to be sued for and collected in the name of the people of the state by the judge-advocate-general; and the sum received shall be forwarded to the chief of ordnance, to be expended by him under the direction of the commander-in-chief, in the purchase of military property.

§ 107. **Penalty for conversion of military property and wrongful wearing of uniform.**— Whoever shall secrete, sell, dispose of, offer for sale, purchase, retain after proper demand made, or in any manner pawn or pledge any military property which shall have been issued under the provisions of this chapter, and any person not a member of the national guard, except organizations specially authorized to do so by this chapter, who shall wear any uniform or designation of grade similar to those in use by the national guard issued or authorized under the

provisions of this chapter, shall forfeit to the people of the state one hundred dollars, and any member of the national guard who shall, when not on duty, wear any such uniform or equipments, without permission of his commanding officer, shall be subject to a fine of not more than ten dollars, which fine shall be forthwith paid over to the chief of ordnance.

ARTICLE VIII.

PAY AND ALLOWANCES.

- SECTION** 120. Duty pay.
 121. Pay of staff of commander-in-chief and assistants.
 122. Pay of officers serving on courts.
 123. Pay, subsistence and transportation when called in aid of civil authorities.
 124. Pay of officers assigned to special duty.
 125. Allowances for headquarters.
 126. Allowances for military organizations ; military fund.
 127. Audit and expenditure of funds.
 128. Semi-annual reports of county treasurers ; bonds for military funds ; funds of disbanded organizations.
 129. Pensions.
 130. Proof required ; striking from roll.
 131. Pension examiners and examining surgeons.

§ 120. **Duty pay.** — There shall be paid to each officer and each enlisted man ordered for duty by the commander-in-chief, except when so ordered for inspection and muster or rifle practice, the following sums, for every day actually on duty, to be known as duty pay : A musician or private, one dollar and twenty-five cents. A first sergeant or sergeant-major, or non-commissioned officer acting as such, two dollars. Any other non-commissioned officer, or private acting as such, one dollar and fifty cents. A lieutenant, two dollars and fifty cents. A captain or company commander, three dollars. A major and a lieutenant-colonel, four dollars per day. A colonel or commanding officer of a regiment, or of a battalion not part of a regiment, five dollars. A brigadier-general, six dollars. A major-general, eight dollars. An adjutant, or officer acting as such, three dollars ; all other staff officers, the pay of officers of the line of equal grade.

Each officer and enlisted man, mounted and equipped, shall be paid two dollars per day for each horse actually used by him.

§ 121. Pay of staff of commander-in-chief and assistants —

The adjutant-general shall be paid an annual salary of four thousand dollars and his necessary expenses and the expenses of his department. The other staff officers of the commander-in-chief, and the assistants in the several departments, in lieu of all compensation and allowances heretofore provided by law in time of peace, when upon actual duty under the provisions of this chapter, either at drills, parades, encampments, lake or sea-coast defense duty, or otherwise, shall be paid such reasonable and just compensation, not exceeding the full pay and allowances of officers of the same rank in the army of the United States, as the commander-in-chief shall deem proper, and in no event to exceed the sum of two thousand five hundred dollars per annum, with their necessary expenses and those of their departments, to be paid by the state upon the certificate of the commander-in-chief, showing a detailed statement of such services and expenses.

§ 122. Pay of officers serving on courts.-- All officers detailed to serve on any board or commission ordered by the commander-in-chief, or on any court of inquiry, court-martial or delinquency court ordered by proper authority in pursuance of any provision of this chapter, shall be paid a sum equal to one day's duty pay for each day actually employed in such board or court or engaged in the business thereof, or in traveling to and from the same. The sum in no case shall exceed ten days' pay and actual traveling expenses and subsistence, unless upon application of the judge-advocate of a court-martial or the presiding officer of a delinquency court for the trial of commissioned officers, or the presiding officer of a board, the commander-in-chief, or in case of such delinquency court, the commander-in-chief or the officer ordering such court, has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a delinquency court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof or in traveling to and from the same, and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. To every marshal appointed to any such court shall be paid two dollars for every day actually employed in the execution of the duties required of him, except the time occupied in the collection of fines and dues, and to every other marshal appointed by any other court established by this

chapter, shall be paid two dollars for every day, not exceeding, ten, actually employed in the execution of the duties required of him, excepting the time occupied in the collection of fines and dues. To each marshal shall be paid twenty-five per centum upon all fines, penalties and dues collected by him, which percentage shall be taxed by the officer issuing the warrant for the collection of such fines, penalties and dues, and by him added to the amount to be collected by such warrant and indorsed thereon, and shall be collected and received to his own use by such marshal or by any sheriff or other officer to whom such warrant shall be delivered for collection, and mileage or actual necessary traveling expenses while engaged in executing any process, mandate or order of the court, to be paid in like manner with other military accounts. No marshal shall receive any fees from any person served except such percentage and mileage where the mandate shall be a warrant; but when the session of the court exceeds ten days he shall receive two dollars additional for every day of such actual extra session.

§ 123. Pay, subsistence and transportation, when called in aid of civil authorities.—All officers and enlisted men of the national guard while on duty or assembled therefor, pursuant to the order or demand of the sheriff of any county or the mayor of any city, in cases of riot, tumult, breach of the peace, resistance to process, or whenever called upon in aid of civil authorities, shall receive the duty pay provided by this article, and such compensation and the necessary expenses incurred in subsisting, quartering and transporting the troops, shall be audited, allowed and paid by the supervisors of the county where such service is rendered, and shall be a portion of the county charges of such county, to be levied and raised as other county charges are levied and raised.

§ 124. Pay of officers assigned to special duty.—Any commissioned officer assigned to special duty, shall be paid duty pay for the time actually employed, and his necessary traveling expenses, when such payment is authorized by the commander-in-chief. Judge-advocates shall be paid for services in bringing any suits provided for in this chapter, and for services in actions or proceedings by habeas corpus, certiorari or otherwise, such compensation as shall be approved by the commander-in-chief upon the recommendation of the judge-advocate-general. All

officers of staff departments shall be paid duty pay for special service ordered by competent authority, upon the recommendation of the chiefs of their respective departments, and the approval of the commander-in-chief.

§ 125. **Allowances for headquarters.**—On the certificate of the adjutant-general the comptroller shall annually draw his warrant upon the treasurer for the following sums, namely: Twelve hundred dollars for each division and for each brigade headquarters, two hundred and fifty dollars for each regimental headquarters, and two hundred dollars for each battalion and provisional battalion headquarters, and one hundred and fifty dollars for each signal corps. The commander-in-chief may, in his discretion, make a further allowance for brigade headquarters in brigades covering a territory of more than ten counties,—of five hundred dollars. The funds thus allowed shall only be expended by the respective commanding officers on the approval of the adjutant-general.

§ 126. **Allowances for military organizations; military fund.**—On the certificate of the adjutant-general, the comptroller shall likewise annually draw his warrant upon the treasurer in favor of each county treasurer specified in such certificate, for the organization of the national guard mentioned therein, as follows: One thousand dollars for each battery of light artillery and each troop not a part of a regiment or battalion; two hundred and fifty dollars for each separate company; and for each regiment, battalion not a part of a regiment, separate troop, separate battery, separate company and signal corps, for the purpose of defraying other necessary military expenses, a sum equal to eight dollars for each of its enlisted men present for duty, based upon the percentage present for duty for the year at the five compulsory parades required in this chapter, and which percentage shall be certified to by the inspector-general, which sums, together with the fines and penalties collected from delinquent officers and enlisted men shall constitute the military fund of such regiment, battalion not a part of a regiment, separate troop, separate battery, separate company or signal corps.

§ 127. **Audit and expenditure of funds.**—The funds allowed to regiments and battalions under this article shall be expended for the benefit of such organizations upon the approval and audit of an auditing board, consisting of the commanding officer of the

brigade, the commanding officer, and the next two officers highest in rank in the organization ; in the case of batteries, troops, signal corps and companies, not a part of a regiment or battalion, such board shall consist of the officers of the organization. The auditing board shall draw its order on the proper county treasurer for the payment of all just claims allowed by them, but such order shall not be paid by the county treasurer until after the vouchers in support of such claim shall have been approved by the commanding officer of the division or brigade as the case may be and by the adjutant-general.

§ 128. **Semi-annual reports of county treasurers; bonds for military funds; funds of disbanded organizations.**—Each county treasurer shall report on the first day of March and September of each year, to the adjutant-general, the amount of all moneys received and paid out by him on account of each regiment, battalion, troop, battery, company or signal corps fund, and the balance then remaining in his hands, and the number or designation of the regiment, battalion, troop, battery, company or signal corps for which the same is held in trust. The bond now required by law to be given by county treasurers for the faithful discharge of their duties, shall be held to apply to any moneys that may come into their hands under the provisions of this chapter, but no fees or commissions on any such moneys shall be charged, received or retained by any county treasurer. The adjutant-general is hereby authorized and empowered to draw, use, and apply to the benefit of the national guard, any and all moneys and balances remaining in the hands of the several county treasurers of the state, to the credit of any organizations of the national guard which have been disbanded, or to pay audited bills of disbanded national guard organizations from such funds, or from unexpended national guard appropriations where balances remain. The several county treasurers of this state are authorized and directed to pay to the adjutant-general, upon his order, all moneys remaining in their hands to the credit of any disbanded organization of the national guard. The certificate of the adjutant-general shall be sufficient evidence of the disbandment of any such organization.

§ 129. **Pensions.**—Every member of the national guard who shall be wounded or disabled while in the service of the state, in cases of riot, tumult, breach of the peace, resistance to process,

invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of the state, and every such member who shall be wounded or disabled, or has been so disabled in the performance of any actual service of this state since June 18, 1867, such as in case of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall, upon proof of the fact, as hereinafter provided, be placed on the list of invalid pensioners of the state, and shall receive, out of any moneys in the treasury of this state, not otherwise appropriated, upon the certificate of the surgeon-general, audit of the adjutant-general and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States; and in case of fatal injury causing death, then the widow or minor children of such member of the national guard, shall receive such pension and reward, which shall date from and be paid from June 18, 1867, in cases where such injury or death occurred prior thereto and after that date, from the time of receiving the injuries on account of which such pension or reward is allowed. And any member of the New York state militia, who within thirty years and more than twenty years before June 18, 1867, has been disabled equivalent to the loss of a hand or a foot in the performance of any actual military service of this state, may apply for and receive a pension under the provisions of this article, provided that no pension shall be granted for any disability received while in the service of the United States, or while proceeding to or returning from such service.

§ 130. **Proof required; striking from roll.**—Before the name of any person is placed upon the pension roll under this article, proof shall be made under such regulations as the adjutant-general may from time to time prescribe, that the applicant is entitled to such pension. The adjutant-general, with the approval of the governor, shall cause to be stricken from the pension-roll the name of any person, whenever it appears by satisfactory proof that such name was put upon such roll through false or fraudulent representations. The adjutant-general, with the approval of the surgeon-general and the governor, may increase or reduce,

or withdraw any pension according to right and justice and the practice in the United States pension office.

§ 131. **Pension examiners and examining surgeons.**— The adjutant-general is authorized to appoint examiners to make special examinations into the merits of any pension claim, whether pending or adjudicated, and any person so appointed shall have power to administer oaths, to orally examine witnesses, to issue subpoenas, and to take affidavits and depositions in the course of such examinations.

The surgeon-general, upon the request of the adjutant-general, shall appoint surgeons, who, under the directions of the adjutant-general, shall make such examinations of the pensioners and claimants for pensions as he shall require, and certify the result in such form as he shall prescribe, and any person adversely affected by the report of one surgeon shall be entitled to a second examination before a board of three surgeons.

Examiners and surgeons shall be paid out of any moneys in the treasury of the state not otherwise appropriated, such reasonable compensation for their services, with their necessary and proper disbursements, as may be certified to by the adjutant-general and approved by the governor.

ARTICLE IX.

MILITARY DUTY REQUIRED.

- SECTION** 140. Annual inspection and muster.
 141. Annual compulsory drills and parades.
 142. Disobedience of orders.
 143. Camp duty.
 144. Instruction in United States forts and vessels; parade for escort duty.
 145. Warning of troops for parade and camp duty, and return of service of notice; return of delinquent enlisted men.
 146. Warning of officers and non-commissioned staff officers.
 147. Military parades by unauthorized bodies prohibited.
 148. Exemption of member of national guard from arrest; right of way; free passage of toll-gates.

§ 140. **Annual inspection and muster.**— An annual inspection and muster of each organization of the national guard shall be made by the inspector-general or his assistants, at such time and place as the commander-in-chief shall order and direct.

§ 141. **Annual compulsory drills and parades.**— Officers — other than general and staff officers — and enlisted men, shall be obliged to perform during the year not less than five compulsory drills and parades, including inspection and muster and camp duty. There shall be additional drills in the evening, to the number of not less than twelve annually, which shall be compulsory, and shall be specified by the commanding officers of organizations. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his organization to meet for parade, drill and instruction at such times and places as he may appoint.

§ 142. **Disobedience of orders.**— The commanding officer at any drill, parade or encampment, may cause those under his command to perform any military duty he shall require, and may place in arrest for the time of such drill, parade or encampment any officer or enlisted man who shall disobey the orders of his superior officer, or in any way interrupt the exercises, and any other person or persons who shall trespass on the camp ground, parade ground or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those under arms, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered drill, parade or encampment; and may prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer, the holding of huckster or auction sales, and all gambling, within the limits of such parade or encampment, or within such limits not exceeding one mile therefrom as he may prescribe; and he may, in his discretion, abate as common nuisances all such sales of liquors, wine, ale or beer, huckster or auction sales, within such limits. No parade or drill of the national guard shall be ordered on any day during which an election shall be held, except in cases of riot, invasion or insurrection, or of imminent danger thereof; and, if any officer shall order any such parade or drill, he shall forfeit to the people of this state the sum of one hundred dollars.

§ 143. **Camp duty.**— The commander-in-chief may cause the national guard, or such portion of it as he may direct, to perform at least five consecutive days of camp duty in each year. All encampments shall be held at state camping grounds, unless otherwise ordered by the commander-in-chief. Such grounds shall be selected and leased or purchased by the adjutant-general, inspector-

general and chief of ordnance, subject to the approval of the commander-in-chief, and rented or paid for by the state. The comptroller is hereby authorized and empowered to draw his warrant upon the state treasurer, on the certificate of the adjutant-general approved by the commander-in-chief, for such sums as shall be required in purchasing or renting, and in laying out and preparing grounds designated for such purpose, and in furnishing quarters for troops ordered into camp, and for all necessary disbursements, and for the pay, transportation and subsistence of such troops, including the necessary expenses of music. Such disbursements to be audited by the adjutant-general and approved by the commander-in-chief.

Where real property shall be required for the purpose of a state camping ground, or for rifle practice, or other military purpose in connection with any state armory or arsenal, which is deemed necessary by the adjutant-general, and the adjutant-general is unable to agree with the owners for the purchase thereof, title thereto shall be acquired by the attorney-general in the name of the people of the state by condemnation, on the written application of the adjutant-general. The cost of all real property so taken shall be paid for by the state. Upon the certificate of the adjutant-general, the treasurer, upon warrant of the comptroller, is authorized and empowered to pay the costs, damages and expenses incurred by and awarded in any proceedings for the condemnation of any such property, out of the unexpended balances remaining to the credit of the general military fund in his hands.

§ 144. **Instruction in United States forts and vessels ; parade for escort duty.** — The commander-in-chief may, in his discretion, order such organizations as he shall deem proper and without regard to the arm of service, to be stationed at such forts or other places as may be furnished by the United States government, or as may be convenient for that purpose, within the state of New York for instruction in the management of artillery for sea and lake coast defense, under such instructors as he shall assign for that purpose. He may, in his discretion, order such organizations as he shall deem proper, to parade for purposes of drill, review or escort duty, and prescribe all the regulations and requirements therefor.

§ 145. **Warning of troops for duty.**—Orders for duty may be oral or written. Enlisted men may be warned for duty as follows : Either by stating the substance of the order or reading the order to the man warned, or by delivering a copy of such order to such man, or by leaving a copy of such order at the last known place of abode or business of such man with some person of suitable age and discretion, or by sending a copy of such order or a notice containing the substance thereof to such man by mail, directed to him at his last known place of abode or business, or the post-office nearest thereto. Such warning may be given by any officer or non-commissioned officer.

The officer or non-commissioned officer giving such warning shall make a return thereof containing the names of the persons warned and the time, place and manner of warning. Such return shall be verified by his oath, which may be administered by any commanding officer ; such verified return shall be as good evidence, on the trial of any person returned as a delinquent of the facts therein stated, as if such officer or non-commissioned officer had testified to the same before the delinquency court on such trial. Every commanding officer shall make the like return, on honor, and with like effect, of every delinquency and neglect of duty of his officers and non-commissioned officers, and also of every enlisted man who shall refuse or neglect to perform such military duty as may be required.

§ 146. **Warning of officers and non-commissioned staff officers.**—Officers and non-commissioned staff officers may be warned for duty in the same manner as prescribed for the warning of enlisted men, and return of such warning shall be made in like manner and with like effect.

§ 147. **Military parades by unauthorized bodies prohibited.**—No body of men, other than the regularly organized corps of the national guard and militia and the troops of the United States, except such independent military organizations as were on the twenty-third day of April, eighteen hundred and eighty-three, and now are, in existence, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state.

No city or town shall raise or appropriate any money toward arming, equipping, uniforming, or in any other way supporting, sustaining or providing drill-rooms or armories for any such

body of men ; but associations wholly composed of soldiers honorably discharged from the service of the United States may parade in public with fire-arms on decoration day or upon the reception of any regiments or companies of soldiers returning from such service, and for the purpose of escort duty at the burial of deceased soldiers, and students in educational institutions where military science is a prescribed part of the course of instruction may, with the consent of the governor, drill and parade with fire-arms in public, under the superintendence of their teachers. This section shall not be construed to prevent any organization authorized to do so by law from parading with fire-arms. The independent military organizations mentioned in this section, not regularly organized as organizations of the national guard, are hereby made subject to the orders of the commander-in-chief in case of emergency or necessity, to aid the national guard in quelling invasion, insurrection, riot or breach of the peace, provided the officers and members of such organization shall, when so called upon, first sign and execute and deliver through their commanding officer to the officer commanding the national guard, to whom it is ordered to report a form of enlistment in form to be prescribed by the commander-in-chief in regulations or orders for a term not less than thirty days nor more than ninety days at one time ; and if the service of such organization shall not be required for the full term of their enlistment, they shall be discharged by the order of the commander-in-chief. All members of such independent organizations, when called into the service of the state, as herein provided for, shall be equipped and paid by the state, and shall be protected in the discharge of their duties, and in obeying the orders of the commander-in-chief, as though a part of the national guard of the state. Any person violating any provision of this section shall be deemed guilty of a misdemeanor.

§ 148. **Exemption of members of national guard from arrest ; right of way ; free passage of toll-gates, bridges and ferries.**—No person belonging to the military forces of this state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty. Any portion of the national guard and militia parading, or performing any duty, according to law, shall have the right of way in any street or highway through which they

may pass, provided the carriage of United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments, shall not be interfered with thereby. Any person belonging to the military forces of the state, going to or returning from any parade, encampment, drill or meeting which he may be required by law to attend, shall, together with his conveyance and the military property of the state, be allowed to pass free through all toll-gates and over all toll-bridges and ferries.

ARTICLE X.

INVASION, INSURRECTION AND BREACHES OF THE PEACE.

SECTION 160. Power of commander-in-chief in case of invasion.

161. National guard, how ordered out in case of insurrection.

162. When sheriffs or mayors may call on commanding officer for aid.

163. Draft or volunteers from enrolled militia.

164. Punishment for failure to appear.

165. Organization and number of militia when ordered out.

§ 160. Power of commander-in-chief in case of invasion.—

The commander-in-chief shall have power, in case of insurrection, invasion, tumult, riot or breaches of the peace, or imminent danger thereof, to order into the active service of the state any part of the national guard or of the militia or military organizations of the state, that he may deem proper, and all the members thereof who shall be ordered out by any proper authority for such service, shall not be liable civilly or criminally for any act or acts done by them while on duty.

§ 161. National guard, how ordered out in case of insurrection.— In case of insurrection or invasion or imminent danger thereof, within the limits of any command, the senior commanding officer of such command shall order out, for the defense of the state, the national guard, or any part thereof under his command, and immediately report what he has done, and the circumstances of the case, to the commander-in-chief.

§ 162. When sheriffs or mayors may call on commanding officers for aid.— In case of any breach of the peace, tumult, riot or resistance to process of this state, or imminent danger

thereof, any sheriff of any county, or the mayor of any city, may call for aid upon the commanding officer of the national guard stationed therein or adjacent thereto. The commanding officer upon whom the call is made shall order out, in aid of the civil authorities, the military force or any part thereof under his command, and shall immediately report what he has done and all circumstances of the case to the commander-in-chief.

§ 163. **Drafts or volunteers from enrolled militia.**—Whenever it shall be necessary to call out any portion of the enrolled militia other than the national guard, for active duty, the commander-in-chief shall direct his order to the mayor of any city or the supervisor of any town, who, upon receipt of the same, shall forthwith proceed to draft as many of the enrolled militia in their city or town, or accept as many volunteers as are required by the commander-in-chief, and shall forthwith forward to the commander-in-chief a list of the persons so drafted or accepted as volunteers.

§ 164. **Punishment for failure to appear.**—Every member of the enrolled militia ordered out, or who volunteers or is drafted under the provisions of this article, who does not appear at the time and place designated by the mayor or supervisor, or who has not some able-bodied and proper substitute at such time and place, within twenty-four hours from such time, or who does not produce a sworn certificate of physical disability, from a physician in good standing, to so appear, shall be taken to be a deserter and dealt with as prescribed in the articles of war of the United States.

§ 165. **Organization of militia when ordered out.**—The portion of the enrolled militia so accepted, shall be immediately mustered into the service of the state for one year, or such less period as the commander-in-chief may direct, and shall be organized into troops, batteries or companies, which may be arranged in battalions or regiments, or assigned to organizations of the national guard already existing. The commander-in-chief is authorized and empowered to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to the laws for the government of the national guard.

ARTICLE XI.

ARMORIES.

SECTION 170. Supervisors to furnish armories.

- 171. Local armories.
- 172. Expenses of erecting, improving and furnishing armories.
- 173. Special provisions as to armories in New York city.
- 174. New sites for armories in New York city.
- 175. Acquisition of sites by boards of supervisors.
- 176. Control of armories.
- 177. Armories, janitors and engineers.
- 178. Rules and orders for armories and arsenals.

§ 170. **Supervisors to furnish armory.**—Whenever it shall appear by the certificate of the commanding officer of the regiment, or battalion not part of a regiment, to which any troop, battery or company, organized or existing under the provisions of this chapter belongs, or in the case of a separate troop, battery or company, by the certificate of the commanding officer of the brigade or division to which it is attached, together with the certificate of the adjutant-general, that such troop, battery or company, has at least the minimum number of enlisted men established by this chapter who can legally be required to perform the duties prescribed thereby, the supervisors of the county in which such troop, battery or company, is located shall, upon the demand of the commanding officer of such troop, battery or company, approved by the commanding officer of the battalion, regiment, brigade or division to which it belongs or is attached, as the case may be, erect or rent within the bounds of such county for the use of such troop, battery or company, a suitable and convenient armory, drill-room, and place of deposit for the safe-keeping of the arms, equipments, accoutrements, uniforms and other military property furnished under the provisions of this chapter, except in the city of New York. The erection, repairs and alterations, of all armory buildings erected or rented at the expense of a county shall be done under the direction and supervision of the inspector-general and an architect to be designated by the board of supervisors of the county.

§ 171. **Local armories.**—Whenever the adjutant-general and the inspector-general shall deem it expedient that an armory be provided for the use of two or more companies of a regiment, or

battalion not a part of a regiment, or jointly for the use of any of such companies and a battery or troop, or both, the supervisors of the county in which such regiment, battalion, battery or troop is located, shall, except where such accommodation is provided in a state arsenal, upon the demand of the commanding officer of such regiment, battalion, battery or troop, erect or rent within such county a suitable and convenient armory, approved by the adjutant-general and the inspector-general. Whenever, in the opinion of the commanding officer in charge of any armory, the same shall be unfit for use as an armory, he may make complaint to the inspector-general who shall forthwith examine into the condition of such armory and, if found to be unfit for use, shall immediately report the fact to the board of supervisors, who shall thereupon direct the alteration, repair, enlargement or abandonment of the same, and in case of abandonment, provide another suitable armory.

§ 172. **Expenses of erecting, improving and furnishing armories.** — The expenses of erecting, altering, repairing, enlarging or renting armories, purchasing lands for the location of armories, and for providing camp-stools and chairs of a sufficient number, the necessary apparatus, fixtures and means for heating, lighting, ventilating the same, and water and wash-closets in such armories, and for properly preserving the arms, equipments, uniforms and records kept therein, by the construction of suitable lockers, closets, gun-racks, desks and cases shall be a portion of the county charge of each county within the bounds of which is located any arsenal or armory occupied by the national guard, and shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid.

No money shall be appropriated for decorating any armory erected or rented under the provisions of this chapter, nor for any other purpose, to be paid out of the moneys thus levied and collected, except for such purchase, erection, renting, alteration, enlargement, repair and furnishing of such armories, unless the necessity for such expenditure shall have been examined into and certified by the auditing board of the respective organizations.

§ 173. **Special provisions as to armories in New York city.** — In the city and county of New York, the demands of commanding officers of regiments, battalions, batteries or troops, for suitable armories, or for alterations, repairs or enlargements and fur-

nishing of armories, as hereinbefore provided, shall be made to a board hereby created, consisting of the mayor, the two senior ranking officers in command of troops of the national guard in such city and county, the president of the department of taxes and assessment and the commissioner of public works, who shall consider such applications and, if they approve, shall make their recommendations to the commissioners of the sinking fund, who, if they concur in such recommendations, shall specify the sums to be appropriated for such purchase, erection, rental, enlargement, alteration, repairing or furnishing of armories, including suitable accommodations for division and brigade headquarters, which sum shall be inserted by the comptroller in his departmental estimates; and the board of estimate and apportionment is hereby authorized and directed to include such sum in the final estimate for the tax levy for the next ensuing year; or the commissioners of the sinking fund may, from time to time, in their discretion, direct the comptroller of the city to issue bonds or stocks of the mayor, aldermen and commonalty of the city of New York, redeemable in not less than ten nor more than twenty years from the date of issue, in such amounts as shall be necessary to provide such sums or any part thereof, and the mayor and comptroller of the city are hereby authorized to sign such bonds, which shall bear interest at a rate not exceeding three per centum per annum, and shall not be disposed of at less than the par value thereof, and it shall be the duty of the clerk of the common council of the city to countersign the same and to affix the seal of the city thereto, and the proper authorities of the city and county of New York are hereby authorized and directed to cause to be raised upon the property, subject to taxation in the city and county of New York, such sums of money as may be required to pay the interest on such bonds and redeem them at maturity. The title to any property, acquired under this section through the approval of the commissioners of the sinking fund, shall be vested in the mayor, aldermen and commonalty of the city of New York.

All armory buildings in such city shall be erected and all alterations, repairing, enlargements and furnishing thereof shall be made and done under the direction and supervision of the board created by this section, but all work which it is necessary to do, and all materials which it is necessary to purchase in and

for such erection, alterations, repairs, enlargements and furnishing, shall be done and procured under contract made at public letting, pursuant to the general provisions of law as to public contracts in the city of New York.

The comptroller is authorized and required to pay, on the requisition of such board, the amount certified from time to time to be due, in such manner as he shall direct, and the amount appropriated shall not be exceeded in incurring expenditures under this provision. Such commissioners of the sinking fund may also, in their discretion, appropriate any plot or plots of land belonging to the city and not already appropriated to some other public use as locations on which armory buildings may be erected. All repairs to armories in the city of New York, certified to be necessary by the auditing boards of the organization occupying the same, shall be made under the provisions of law now existing for repairs of public buildings in such city.

§ 174. **New sites for armories in New York city.**—The armory board mentioned in the last preceding section is authorized and empowered, subject to the approval of the commissioners of the sinking fund of the city, to select, locate and lay out such and so many sites for armories within such city and county, as such board and the commissioners of the sinking fund shall, from time to time, deem necessary to be acquired. No site shall be located in any park or public place or on land now occupied by a reservoir. When the armory board shall have selected a site, it shall cause a survey, map or plan thereof to be prepared, and shall submit the same with such other information as it may deem necessary to the commissioners of the sinking fund for their approval or disapproval. If the commissioners of the sinking fund shall approve of such site and consent to the acquisition thereof for the purpose of an armory, such approval and consent shall be indorsed upon or attached to such survey, map or plan, and shall be signed by not less than a majority of such commissioners, of whom the comptroller must be one. Such survey, map or plan, with such approval or consent indorsed upon and attached to it, shall be filed in the office of the register of the city and county of New York, and a true copy thereof, certified to by the chairman of the armory board and the commissioner of public works of the city, shall be filed in the office of such commissioner. The survey, map or plan provided for in this section,

shall be made by the department of public works, upon the requisition of such armory board, and the expense thereof shall be charged against and paid out of any appropriation raised for such department, in the discretion of the commissioner of public works. Such commissioner and all persons acting under his authority or direction, may enter in the day-time into or upon any real property which it shall be necessary to enter into or upon for the purpose of making any such survey, map or plan. The title to any site so selected and approved, and to the acquisition of which such consent shall have been given, shall be acquired by the armory board, in the name of the mayor, aldermen and commonalty of the city of New York, by proceedings for the condemnation of real property, taken and had pursuant to the provisions of the condemnation law. The counsel of the corporation of the city of New York shall act as attorney for the armory board in such proceedings. The title to any property acquired in any such proceedings shall be vested in the mayor, aldermen and commonalty of the city of New York.

The damages and expenses incurred in the proceedings for the acquisition of the title to any such site shall be met and paid in the same manner as moneys to be raised and paid in the city and county of New York, under or pursuant to the provisions of the last preceding section.

The method prescribed in this section for the acquisition of sites for armories for the national guard of the city of New York, shall not be deemed to be exclusive of the method prescribed by the last preceding section.

§ 175. **Acquisition of sites by boards of supervisors.** — The board of supervisors of any county in which any state armory is now to be built or is hereafter required to be erected for the use of the national guard in such county, are authorized to purchase a suitable site for the erection of such armory, to be approved by the adjutant-general, the title to which shall be taken in the name of and be vested in the people of this state. If such board is unable to agree for the purchase of such site with the owners thereof, the chairman of such board shall acquire title to such property in the name of the people of the state under the condemnation law, and such board, when notified by its chairman that any land has been purchased or acquired pursuant to the provisions of this section, shall appropriate such sums as shall be necessary for the pay-

ment of the purchase-price or cost of such property, together with the cost of acquiring the title thereto, and for the grading, filling, excavating, draining, paving streets, flagging sidewalks, fencing such property, providing sewer connections and the furnishing and equipping of the armory when built, which shall be county charges.

Whenever any real property is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold at public or private sale, for the best price that can be obtained, and if the property is taken by the state the net sum realized therefrom shall be paid into the state treasury, and if taken by a county, to the county treasurer of such county, or it may be used for the improvement of the property taken by the authorities authorized to erect such armory.

This section shall not apply to or affect the city and county of New York.

§ 176. **Control of armories.**—Every armory shall be under the control and charge of the ranking line officer commanding an organization therein quartered. Commanding officers shall deposit in the armories provided for their organizations all military property received by them from time to time for the use of their respective commands. The chiefs of the general staff departments of the state, and division and brigade commanders and their respective staff officers, shall at all times have access to such armory whenever, in their judgment, the exigency of the service may require it.

On the application of one or more posts of the grand army of the republic or other veteran organizations of honorably discharged union soldiers, sailors or marines of the late war, approved by the commanding officer of the brigade of the national guard in whose jurisdiction armories, the property of the state, are located, subject also to the approval of the adjutant-general and under such restrictions as he may prescribe, the officer in charge of any state armory designated by the adjutant-general shall provide a proper and convenient meeting room or rooms in such armory where such posts or other veteran organizations may hold regular and special meetings, without the payment of any expense therefor.

§ 177. **Armorsers, janitors and engineers.**—There shall be allowed for each armory one armorer, and if the armory be

heated by steam one engineer ; there shall also be allowed for an armory occupied by a regiment, by a battalion not part of a regiment, by a battery of light artillery, by a troop, or by two or more separate batteries or companies one janitor ; and the armorer, the engineer and the janitor thus authorized, shall be appointed by the ranking commanding officer of the organization or organizations quartered in the armory. Where a signal corps, troop, battery of light artillery, or the headquarters of a brigade occupies a portion of an armory such troop or battery of light artillery shall also be entitled to an armorer and a janitor, and such signal corps or brigade headquarters shall also be entitled to an armorer, who shall be appointed by its respective commanding officer and such headquarters and quarters shall be considered an independent armory, upon the approval and certificate of the commanding officer of the brigade within whose district such armory is located, which shall be filed with the disbursing officer of the county in which such armory is located. The armorer shall, under the direction of the officer appointing him, take charge of the armory, arsenal, and places of deposit of the regiment, battalion, troop, battery, company, signal corps and brigade headquarters, and of all uniforms, arms, equipments, and other property issued under the provisions of this chapter therein deposited, and discharge all duties connected therewith as shall be, from time to time, prescribed by such commanding officer. The special duty of the engineer shall be to take charge of the heating apparatus, and the janitor shall take care of the armory, the cleanliness thereof and of the furniture, fixtures and property therein. To provide for the proper care and cleanliness of armories and arsenals and of the property therein deposited, the commanding officer of a regiment, battalion not part of a regiment, troop, battery, company, signal corps, or brigade, or the ranking commanding officer, where two or more separate batteries or companies are quartered in an armory, may appoint laborers as follows: for armories or arsenals having ten thousand square feet of floor surface, one laborer, where the floor surface exceeds twenty thousand square feet, two laborers, and for each thirty thousand square feet in excess of twenty thousand, an additional laborer ; such computation of square feet, to include all drill-rooms, administration and meeting rooms, drill-sheds, hallways, rifle range and lavatories, but excluding such cellar-rooms, boiler-

rooms and store-rooms as are not included in the foregoing classification and excluding armorers' and janitors' quarters. Before any such appointment is made, the necessity for the employment of such laborer or laborers shall be certified by the commanding officer of the brigade, and such certificate shall be filed in the office of the disbursing officer of the county in which the armory is situated. A certificate of the number of feet of floor surface of each armory in which laborers are appointed shall be made by the engineer of the brigade and approved by the commanding officer of the brigade within whose district such armory is located, and filed in the office of the disbursing officer of the county in which the armory is located. Such persons so appointed shall receive compensation for the time actually and necessarily employed in their duties, to be fixed by the commanding officer appointing such persons as follows: When employed in armories or arsenals located in cities, armorers, janitors and engineers not to exceed four dollars per day unless the city has a population of less than two hundred thousand in which case such compensation shall not exceed three dollars per day, and two dollars per day in armories not located in cities; laborers not to exceed two dollars per day, which compensation, as certified to by the commanding officer appointing such persons under the provisions of this section, shall be paid monthly, and shall be a county charge upon the county in which such armory or arsenal is situated, and shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid. A commissioned officer shall not be eligible for appointment to and shall not hold the position of armorer, janitor, engineer or laborer in any arsenal or armory.

§ 178. **Rules and orders for armories and arsenals.**—The commander-in-chief may from time to time, make such orders, rules and regulations as he deems proper for the observance of all officers and persons having charge of any arsenal or armory

ARTICLE XII.

RIFLE ASSOCIATIONS AND STATE PRIZES.

SECTION 190. Directors of rifle associations ; inspection of rifle range ; report ; unsafe range or gallery.

191. Terms and conditions of issue of property to rifle ranges.

192. Rifle ranges.

193. Powers of officers of associations to preserve order.

194. State brigade prize and state prize for competition.

195. Duties of treasurers of rifle associations.

§ 190. **Directors of rifle associations ; inspection of rifle range ; report ; unsafe range or gallery.**—The general inspector of rifle practice and the commanding officers of the division and brigade and inspectors of rifle practice of commands in the district in which the rifle range of any incorporated rifle association is situated, shall be ex-officio directors thereof. Inspectors of rifle practice are authorized to inspect rifle ranges of all incorporated rifle associations within their respective districts, at any time, and in case of associations or organizations which have received targets or other articles and aid from the state, to require a report from their proper officers of their financial condition, and of the condition of the state property in their possession, and to examine their books and vouchers. If, at the conclusion of any such inspection, it shall be found that any of the property issued by the state to any rifle association or range is missing, injured, unfit for use or deficient, it shall be reported through the general inspector of rifle practice to headquarters. In case any range, or armory rifle galleries, shall, in the opinion of the general inspector of rifle practice or the division or brigade inspector of rifle practice of the district in which the same is located, be dangerous, they are respectively authorized to prevent its being further used until rendered safe.

§ 191. **Terms and conditions of issue of property to rifle ranges.** — On the order of the commander-in-chief, the chief of ordnance will issue to rifle ranges, targets and other appurtenances and military equipments for the practice of the national guard thereon, in the same manner as other ordnance stores are issued by him ; and under the direction of the commander-in-chief, and with his approval, expenditures may be made from the appropriations for military purposes, for services and expenses in

maintaining rifle ranges and promoting rifle practice in the national guard. Before any targets or other appurtenances or military equipments are issued to any rifle association or any aid given it by the state, it shall file with the adjutant-general and the general inspector of rifle practice a certified copy of its articles of association and by-laws and other regulations which must have the approval of the general inspector of rifle practice, to whom must be furnished annually a list of its officers. Such bonds as may be required by the commander-in-chief shall be given to secure the care and custody of any targets or other property issued to any rifle range or association by the state.

§ 192. **Rifle ranges.** — The ranking commanding officer in any district in which there is any rifle range which has received aid from the state, shall have authority to direct and require the use thereof by any of the organizations of his command.

§ 193. **Powers of officers of associations to preserve order.** — For the purpose of preserving the property of the state, issued to the several rifle associations and ranges which receive aid therefrom, and of preventing accidents, and for maintaining order upon such rifle ranges, the officers and employes of rifle associations having a rifle range, shall have the powers of constables when in the discharge of their duties, and wear such badges of office as shall be prescribed by such associations respectively.

§ 194. **State brigade prize and state prize for competition.** — The commander-in-chief is authorized to annually offer in each brigade on behalf of the state, a prize, not exceeding one hundred dollars in value, to be known as the state brigade prize, for competition among the several regiments, battalions not part of a regiment, and separate companies in each brigade, and a similar prize not exceeding five hundred dollars in value, to be known as the state prize, for competition among the several regiments, battalions not part of a regiment, and separate companies throughout the state, and a prize not to exceed fifty dollars in value for the company in each brigade having the highest general figure of merit; such prizes to be competed for under regulations which shall be prescribed by the general inspector of rifle practice. The general inspector of rifle practice or his assistant shall attend the annual competition for the state prize, and see that the same is conducted with fairness and according to the prescribed regulations.

§ 195. **Duties of treasurers of rifle associations.**—The treasurers of all rifle associations which receive aid from the state, shall annually file with the comptroller and the adjutant-general within twenty days after the first day of November, a detailed statement of all receipts and expenditures of such rifle associations during the previous twelve months, verified by such treasurers under oath; and the presidents of such rifle associations shall annually, within twenty days after the first day of November, file with the general inspector of rifle practice a statement in detail of all the property of such associations and the condition of the same.

ARTICLE XIII.

MILITARY COURTS.

- SECTION** 210. Military courts.
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240. Fines for offenses against by-laws and company dues.
241. Payment of fines and penalties to county treasurer.
242. Violations of by-laws ; expulsion.
243. Immunity of members of military court.

§ 210. **Military courts.**—The military courts of this state shall be: 1. Courts of inquiry. 2. General courts-martial. 3. Garrison courts-martial. 4. Delinquency courts, which are of two kinds: 1. For officers. 2. For enlisted men.

§ 211. **Courts of inquiry.**—Courts of inquiry, to consist of from one to three officers of at least equal grade with the officer, or with the senior officer if there be more than one, in regard to whom the court is ordered, may be ordered by the commander-in-chief or the commanding officer of a division for investigating the conduct of any officer, or for investigating any facts made the subject of military complaint. Such court of inquiry shall, without delay, report the evidence adduced, a statement of the facts, and, when required, an opinion thereon, to the officer ordering the court.

§ 212. **General and garrison courts-martial.**—General courts-martial shall be ordered by the commander-in-chief and shall consist of five officers, any three of whom shall constitute a quorum, but at all times a majority of the court must be of a grade at least equal to that of the accused. Garrison courts-martial for the trial of military offenses committed by enlisted men, when subject to the articles of war, may be appointed by the officer thereto authorized by such articles, and shall possess the jurisdiction and power to punish exercisable by such courts thereunder. Such court shall consist of three officers, and the oaths of members, the organization of the court, its procedure, and the record of its proceedings shall be in the form prescribed for that of general courts-martial convened under this article.

§ 213. **Delinquency courts.**—The commander-in-chief shall order or cause to be ordered delinquency courts for the trial of

commissioned officers below the rank of brigadier-general, for delinquencies reported. Such courts shall consist of three officers of at least equal grade with the accused. The proceedings and sentence of such court shall, without delay, be delivered to the commander-in-chief, or to such officer as he may cause to order such court, who shall approve or disapprove the same within fifteen days thereafter, and shall notify the delinquent of his approval or disapproval thereof, and from the sentence of such court imposing a fine or penalty for any delinquency, the person tried may appeal within twenty days after notification of the fine or penalty, and the commander-in-chief, or, in case such court shall be ordered by a commanding officer of a division or brigade by his direction, then the officer ordering such court may remit or mitigate such fine or penalty.

§ 214. **Delinquency courts for enlisted men.**—The commanding officer of each regiment or battalion not a part of a regiment, may appoint a delinquency court to consist of one commissioned officer of his command for the trial of enlisted men of his command. The commanding officer of each brigade may in like manner appoint a delinquency court or delinquency courts for the trial of enlisted men in such troops, batteries, separate companies and signal corps as are under his direct command, and shall designate the organizations over which each court shall have jurisdiction. The commander-in-chief may, in like manner, appoint a delinquency court or delinquency courts, for the trial of enlisted men of any organization or organizations not herein provided for. Any officer so detailed may be relieved from the duties of such court at any time, by the officer appointing him or his successor in office and another detailed as such court. Proceedings pending before such court shall not abate or be suspended by reason of such relief and new detail, and any officer so detailed shall have full power and authority to do and perform all acts necessary to complete any proceedings pending before the court to which he was appointed, and to carry into effect any judgment, mandate, order or process, made or issued by such court, previous to such relief and new detail. A delinquency court, so appointed, shall be permanent and continuous. Its sessions shall be held at such times and in such places as may be most convenient for the prompt disposition of the business of the court within the discretion of the officer constituting the same.

The officer constituting such court may appoint, and at any time remove, a clerk thereof, who shall receive a reasonable compensation, to be fixed by such officer with the approval of the officer appointing such court. It shall be the duty of the commanding officer of every regiment or battalion, every company attached to a regiment or battalion, and of every battery, troop, separate company and signal corps, to make return to the delinquency court, appointed for, or having jurisdiction over the enlisted men of his command, as herein provided, of all delinquents in his command, whereupon such delinquents must be forthwith summoned to appear before such delinquency court at the time and place designated in the summons. Each organization, returning delinquents for trial by such court, shall audit and pay out of its military funds, in the same manner that other military accounts are audited and paid, the compensation and necessary expenses of the officer holding the court, and the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of delinquents in such organization and the necessary business connected therewith. The proceedings and sentence of such court shall, from time to time as may be convenient for the prompt disposition of its business, be delivered to the officer ordering the court, or his successor in command, who shall approve or disapprove the same within fifteen days thereafter, and shall notify the delinquent of his approval or disapproval thereof, and from the sentence of any such court imposing a fine or penalty for any delinquency the person tried may appeal within ten days after the notification of the fine or penalty, and the officer ordering the court, or his successor in command, may remit or mitigate such penalty or fine.

§ 215. *Oath of officers of delinquency court.*— Before entering upon his duties each member of a delinquency court shall take an oath of office to the effect that he will well and truly try and determine, according to evidence, all matters between the people of the state of New York and any person or persons who shall come before the court to which he is appointed. This oath may be taken before any officer authorized by law to take acknowledgments of deeds, or before a field officer or the commanding officer of a brigade, all of whom shall administer the oath without fee. When the court is composed of three officers the junior member

may administer the oath to the senior member, who in turn may administer it to the other members.

§ 216. **Presiding officer of military court ; vacancies ; members to be in uniform ; sittings of court.**—The president of every military court shall be a member of the court highest in grade and rank. Whenever any military court consists of one person, he shall be deemed the president thereof, within the meaning of this chapter. In the absence of the president of any military court, the senior officer present shall preside, with all the powers of president. All the members of such court shall, when on duty, be in uniform. The court may sit without regard to hours, and may adjourn, from time to time, as may be necessary for the transaction of business. Any vacancy in any military court may be filled by the officer who ordered the court, or his successor in command.

§ 217. **Challenges ; oaths of members.**—Challenges to the court, the arraignment of the accused, the proceedings, trial, record and form of appeal, shall in all respects, except as otherwise specially provided herein or in the regulations made hereunder, conform to the law and procedure of the courts-martial of the United States. After the challenges, if any, have been made and determined, the president of the court or the judge-advocate shall administer the oath to the members of the court, and the oath shall be administered to him in turn by one of the sworn members. The oath shall be administered in the presence of the accused, unless, after due notice he fails to appear, and in case of a general court-martial, each member shall take an oath to the effect that he will faithfully try and determine, according to evidence, the matter before him, between the people of the state of New York and the prisoner to be tried, and that he will duly administer justice according to the established rules of law for the government of the military forces of the state, and the judge-advocate shall take an oath to the effect that he will faithfully discharge the duties of judge-advocate of such court according to the established rules of law for the government of the military forces of the state. No challenges shall be allowed in delinquency courts, and the member or members of any delinquency court need not be sworn in the presence of the delinquents.

§ 218. **Attendance of judge-advocate ; accused may have counsel.**—In courts of inquiry and general courts-martial, a judge-

advocate shall attend. In delinquency courts and in garrison courts-martial, the services of a judge-advocate may be dispensed with, and in garrison courts-martial, a member of the court may be designated to act as its recorder. In all the courts provided by this chapter, the accused shall have the right to appear and be heard by counsel.

§ 219. **Secrecy.**—The members and judge-advocates of military courts, except delinquency courts, shall keep secret the proceedings and sentence of the court until the same shall have been approved or disapproved by the proper officer, and shall always keep secret the vote and opinion of any member of the court, unless required to give evidence thereof by a court of justice.

§ 220. **Subpoenas; attachments.**—The president or the judge-advocate of any military court, both before and after being sworn, may issue subpoenas for witnesses whose attendance at such court may be necessary in behalf of the people of this state, and on application, for all witnesses in behalf of any person charged or accused or returned as delinquent; and may direct the commanding officer of any organization to cause such subpoena to be served on any member of his command. The president of a military court may upon proof of service of a subpoena, issue attachments to compel the attendance of witnesses. Such attachments shall be served in the same manner as in civil cases in courts of record. The person so attached for non-attendance shall pay the fees for such service, besides the penalty provided, unless he satisfies the court that his failure to attend was excusable.

The court may issue execution for such fees, which shall be levied in the same manner as other executions.

Every witness not appearing in obedience to such subpoena when duly served personally with a copy of the same, and not having sufficient excuse, shall forfeit to the people of the state the sum of twenty-five dollars. The president of such court shall, from time to time, report to the judge-advocate-general the names of all such delinquent witnesses, together with the names and places of residence of the person serving such subpoena, and such judge-advocate-general may sue for and recover such penalties in the name of the people.

§ 221. **Oath to witnesses and depositions.**—The president or the judge-advocate of every military court shall have power to administer the usual oath to witnesses, and the president shall

have the same power to preserve order, to compel witnesses to be sworn and testify, and to have the testimony of such witnesses as cannot be reasonably produced at the trial taken by commission, as civil courts of record.

§ 222. **Commitments for disorderly conduct.**—Any person who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expressions to or before any military court, or any member of either of such courts, in open court, intending to interrupt the proceedings or to impair the authority of such courts, may be committed to the jail of the county in which said court shall sit, by warrant under the hand of the president of such court.

The warrant shall be directed to the sheriff or any constable or marshal of any such county, or any marshal of the court, and shall briefly state the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain, without bail, in close confinement, for a time to be limited, not exceeding three days, and until the officer's fees for committing and the jailer's fees be paid. Such sheriff shall obey such warrant and keep the person committed thereby until the expiration of the time mentioned in the warrant, and until the officer's and jailer's fees be paid, or until the offender shall be discharged, by due course of law, unless sooner discharged by a judge of a court of record in the same manner and under the same rules as in cases of imprisonment under process of contempt from a civil court of record.

§ 223. **Summons to delinquents; service thereof.**—The president of a delinquency court shall designate and direct a fit person or persons, to summon all delinquents to appear before the court. Service of the summons shall be made by delivering to and leaving with each delinquent a copy thereof, or by leaving a copy at his last known place of abode or business, or in towns or cities in which there is a postal delivery by mailing to him a copy directed to his last known place of abode or business.

§ 224. **Service of charges.**— When an officer or enlisted man is put in arrest for the purposes of trial, a copy of the charges and specifications upon which he is to be tried shall be delivered to him or left at his last known place of abode or business, within

twenty days after arrest, and a court shall be ordered for his trial within thirty days after the notice of arrest is received by the officer authorized to order the court. If a copy of the charges and specifications be not served, or a court be not ordered within the time herein limited, that arrest shall cease, but such charges and specifications may be served, a court ordered and the officer or enlisted man be brought to trial within twelve months after such release from arrest. The appearance of the accused, without objection, and pleading to the charges, shall be deemed a waiver of any defect or irregularity of such service of any of the papers mentioned in this section.

§ 225. **Approval or disapproval of sentence.** — The record of the proceedings and sentence of every court-martial shall, without delay, be delivered to the officer ordering the court, or to his successor in command, who shall approve or disapprove thereof. The sentence of the court shall be published in orders as approved or modified.

§ 226. **Sending back proceedings for revision ; remitting punishment.** — Every officer authorized to approve or disapprove the proceedings and sentences of a court-martial is authorized to reconvene the court and send back its findings and sentence, or either of them, for revision, and to remit, commute, or mitigate any punishment awarded by the court.

§ 227. **Forms of delinquency courts.** — The form of summons issued by delinquency courts provided by this article shall be substantially as follows, the blanks being properly filled up :

SUMMONS.

The People of the State of New York :

To

Greeting : You are hereby summoned and required personally to be and appear before a delinquency court for the trial of, which will meet pursuant to the laws of the state of New York, at..... on the day of, 1... , at o'clock M., by virtue of orders No., from headquarters N. G. S. N. Y. to answer for the following delinquencies, and fines for offenses against regimental, battalion, troop, battery, company, or signal

corps (as the case may be), by-laws, rules and regulations and dues, as follows, that is to say, with being absent from (stating the parade, drill or other duty for which the accused is charged with absence, or other delinquency).

Fines for offenses against the by-laws, rules and regulations of regiment, battalion, troop, battery, company, or signal corps (as the case may be).

\$.....

Dues \$....

Dated at, 1....

(Signature and rank of presiding officer.)

N. G. S. N. Y.

President of the Court.

An affidavit shall be attached to such summons, showing the time, place and manner of service thereof, which may be made before any officer authorized to take acknowledgments of deeds, or before the president of the court or any general or field officer, and no person shall receive any fee for taking such affidavit. The judgment-roll shall consist of the summons and affidavit of service thereof, and the judgment of the court, which shall be in form substantially as follows, the blanks being properly filled up :

THE PEOPLE OF THE STATE OF NEW YORK

against

.....
An (or a) in
(stating the organization of which the
accused is an officer or enlisted man)
national guard of the state of New York.

WHEREAS, The said , having been duly served with the annexed summons to personally be and appear before the court, as required by law, to make answer to the charges therein specified; and the said (state whether the accused did or did not appear)

And it satisfactorily appearing that the said
..... is and was an (or a) , at the aforesaid dates, of the national guard of the state of New York, and that he was and is subject to the jurisdiction of the court; and it duly appearing that he had been duly notified to perform the duty, for

neglect whereof he was returned as delinquent; and, after due deliberation of evidence offered by the people and the delinquent, the court finds and adjudges the said guilty of the following named delinquencies, and does sentence him, the said, to pay a fine therefor as follows:

 (stating each delinquency as set forth in the summons and findings of the court thereon).

Fines for offenses against the by-laws, rules and regulations of regiment, battalion, troop, battery, company, or signal corps (as the case may be).

\$.....

Dues \$.....

Making a total fine of dollars.

Signed

Bank.....

N. G. S. N. Y.,

President of the Court.

The warrant issued for the purpose of collecting the fines and penalties imposed by this chapter shall be substantially in the following form, blanks being properly filled up :

THE PEOPLE OF THE STATE OF NEW YORK:

To the marshals of the court below mentioned, duly appointed according to law, and to any sheriff, marshal, deputy marshal or constable to whom these presents shall come, GREETING:

WHEREAS, Pursuant to the laws of the state of New York, by an order duly issued by (name and rank of the officer ordering court) of the national guard of the state of New York, and dated on the day of, 18...., court was duly appointed, for (state object of court); and,

WHEREAS, The said court was duly and regularly convened, and was from time to time duly adjourned; and,

WHEREAS, (name and rank of accused) in (organization) of the national guard of the state of New York, was duly and regularly returned to said court, as required by law, charged with (state

whether accused was charged with delinquencies, or offenses against Military Code, without specifying character thereof) as appears by (either summons or charges and specifications, as the case may be) duly filed with said court, and was duly summoned and notified to appear before said court, and it satisfactorily appearing to the court that such

was and is an of the national guard of the state of New York and subject to the jurisdiction of the court, and, after due deliberation of the evidence offered by the people and the accused, the court did find and adjudge the said (state finding) and did sentence him to pay a fine of dollars, and did also sentence him to pay for fines for offenses against the by-laws, rules and regulations of the said regiment, battalion, troop, battery, company or signal corps (as the case may be) of dollars, and dues of dollars, making a total fine of dollars; and,

WHEREAS, The proceedings, findings and sentences of such court were thereafter duly approved by, the officer ordering said court.

These are therefore to command you to levy and collect said fines, together with the sum of dollars, being your costs, according to law, of the goods and chattels of, and in default of sufficient goods and chattels of such to satisfy the same; then to take the body of such delinquent and convey him to the common jail of county, and deliver him to the jailer thereof; and the said jailer is hereby directed and required to receive the body of such, conveyed to said jail, as aforesaid, and to keep such closely confined in the manner and during the time required by law, and until discharged according to law, for which this shall be his warrant; and of your doings by virtue thereof to make return to me within forty days after the execution of these presents.

Given under my hand at and state of New York, on the day of, 18...

(Signature),

(Rank and organization of presiding officer.)

N. G. S. N. Y.,

President of said Court.

The papers constituting the judgment-roll and the warrant shall each and all be prima facie evidence of the facts therein, or therein stated before all courts. The jurisdiction of the courts established by this article shall be presumed, and the burden of proof shall rest with the person seeking to oust any such court of jurisdiction in any matter or proceeding.

§ 228. **Fines may be paid to court or marshal; powers of officer hearing appeal.**—Fines for delinquencies may be paid to the court or to the marshal at any session of the court, and in all such cases the president of the court shall record the fact in the proceedings delivered to the officer ordering the court. The officer hearing any appeal may, in his discretion, receive such further evidence as the nature of the case may require, and for that purpose he shall have power to administer oaths to witnesses produced before him, and order testimony of such witnesses as cannot be reasonably produced at the hearing of such appeal to be taken by commission as in courts of record.

§ 229. **Offenses for which officers may be tried by general court-martial; penalties therefor.**—Commissioned officers may be tried by general court-martial for the following offenses:

1. For unmilitary or unofficer-like conduct.
2. For drunkenness on duty.
3. For neglect of duty.
4. For disobedience of orders or any act contrary to the provisions of this chapter, or to the provisions of the regulations for the government of the national guard.
5. For refusing to grant a discharge to an enlisted man when entitled to the same.
6. For oppression or injury of any under his command.
7. For a combination or attempt to break, resist or evade the laws or lawful orders given to a person, or advising any person so to do.
8. For insult to a superior officer in the line of military duty.
9. For presuming to exercise his command while under arrest or suspension.
10. For neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or lawfully ordered by his superior officer.
11. For neglect or refusal to make a draft or detachment when lawfully ordered to do so.

12. For parading the troops under his command on days of election contrary to law.

13. For receiving any fee or gratuity for any certificate.

14. For neglect, when detailed, to drill or instruct a command, to make complaint for neglect or violation of duty as provided by law, or for any other neglect for which a commanding officer would be liable.

15. For neglect or refusal to march, to make a draft, or for disobedience to an order, in case of rebellion or insurrection, as provided by law.

16. For refusal or neglect to obey a precept or order to call out the national guard, or militia, or an order issued in obedience thereto, or for advising any officer or soldier to do the like.

17. For making a false certificate, account, or muster or parade return.

18. For conduct unbecoming an officer and a gentleman, or for conduct to the prejudice of good order and military discipline.

On conviction of any of the above-named offenses, such officer may be sentenced to be cashiered, and shall thereby become incapacitated from holding any military commission, fined to any amount not exceeding one hundred dollars, or reprimanded, or to all or either of such fines and penalties.

§ 230. **Delinquency of officers ; fines.**—Commissioned officers may be fined by delinquency courts for non-attendance without excuse, at any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, not more than ten nor less than five dollars for each day of such non-attendance or delinquency. Absence for a day or any part thereof shall constitute a delinquency.

§ 231. **Semi-annual returns of delinquencies of officers ; when delinquents may be fined.**—The commanding officer of each division, brigade, regiment, battalion not a part of a regiment, troop, battery and separate company shall, on or before May fifteenth and November fifteenth in each year, return to the adjutant-general the names of all commissioned officers absent without excuse, and not on leave of absence, from any parade, encampment, drill or meeting for instruction, during the preceding six months. It shall not be necessary to cause the arrest of such absentee, nor to serve any charges ; but the delinquent may be fined pursuant to the provisions of this chapter.

§ 232. Triable offenses of enlisted men ; sentence.—Enlisted men may be tried by a general court-martial:

1. For disobedience of orders.
2. For disrespect to his superiors.
3. For mutiny.
4. For desertion.
5. For drunkenness on duty.
6. For conduct prejudicial to good order and military discipline.
7. For any act contrary to the Military Code, or to the provisions of the regulations for the government of the national guard, or to the by-laws of the organization to which he belongs, except for the non-payment of dues and fines.

On conviction such enlisted man may be sentenced to be dishonorably discharged with loss of time served, reprimanded, and if a non-commissioned officer, reduced to the ranks, or fined to an amount not exceeding fifty dollars, or all or either of such fines and penalties.

§ 233. Offenses for which delinquency court may fine.—Enlisted men who shall, without proper excuse, be absent from, or in any other respect be delinquent at any drill, parade, encampment, meeting for instruction, or other duty ordered by competent authority, may be fined by a delinquency court for enlisted men not more than five dollars nor less than one dollar for each day or part thereof of such absence or other delinquency.

§ 234. Excuses from parades ; return of delinquents.—The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom, upon good and sufficient grounds.

Commanding officers of troops, batteries, companies and signal corps, shall make a return within five days after any parade, drill or encampment, of all enlisted men absent without excuse from the same to their next superiors in command.

§ 235. Payment of fines.—Any officer or enlisted man fined in any military court may, at any time within twenty days from the day when such fine was imposed, pay the amount thereof to the president of the court.

§ 236. Marshals ; appointment, bonds and duties.—The president of any court-martial or delinquency court may appoint, by warrant under his official signature, and at any time remove one or more marshals, each of whom shall, before entering upon

his duties, execute a bond to the state in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the president of the court appointing him, for the faithful performance of his duties and the prompt payment of all moneys collected by him. And the marshals so appointed shall when required, not only perform the usual duties as such marshals, but shall also execute any process, mandate or order lawfully issued by such president or court, and perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff, marshal or constable. Any bond given as herein provided shall be prosecuted for breach of the conditions thereof, in the name of the people, by the judge-advocate-general, or an officer of his department, and all moneys recovered shall be paid to the military fund of the organization or organizations injured.

§ 237. **Collection of fines and penalties.**— For the purpose of collecting any fines or penalties imposed by any court-martial or delinquency court, the president of the court shall, within twenty days after the expiration of the time in which an appeal is allowed, if such fines and penalties have been approved, issue a warrant or warrants, for the collection of such fines and penalties as remain unpaid. No property shall be exempt from the payment of such fines and penalties. In default of sufficient personal property to satisfy the same, the officer executing the same shall take the body of the delinquent and convey him to the common jail of the city or county in which he may be found, whose jailer shall closely confine him without bail for two days for any fine or penalty not exceeding two dollars, and two additional days for every dollar above that sum, unless the fine or penalty, together with the costs and jailer's fees, be sooner paid. No such imprisonment shall extend beyond the period of twenty days, and the prisoner may be liberated at any time by the order of the officer who ordered the court that imposed the fines or penalties.

§ 238. **Powers, duties and liabilities of marshals, sheriffs and constables; renewal of warrant.**— Any officer to whom any warrant shall be directed and delivered shall execute the same by levying and collecting the fines or penalties within forty days from the receipt of such warrant, and make return thereof to the officer who issued the same. Any warrant for the collection of fines issued by virtue of this chapter may be renewed in the same

manner that executions issued from justices' court may by law be renewed.

§ 239. Dishonorable discharge of those failing to pay fines.—Enlisted men fined by a military court who shall neglect or refuse to pay such fine within forty days after the same was imposed, may be dishonorably discharged from the service by the officer ordering the court without allowance of the time he served, and shall thereby be disqualified from serving in the national guard for a period of five years.

§ 240. Fines for offenses against by-laws and company dues.—When a certified copy of the proceedings relating to the infliction of any fine for offenses against the by-laws, rules and regulations of any association organized pursuant to this chapter, and any dues not exceeding twenty-five dollars, with a copy of such by-laws, rules and regulations, has been returned to any delinquency court, such fine may be enforced by such court in the same manner as a fine for delinquency. Any such fine when collected, shall be paid over to the treasurer of the organization of which the offender or delinquent is a member.

§ 241. Payment of fines and penalties to county treasurer.—All fines and penalties imposed by any military court upon any of the officers or enlisted men of a regiment, battalion, troop, battery, company or signal corps, shall be paid by the officer collecting the same, into the treasury of the county within which the organization of which the person paying the same is a member is located, within thirty days after the collection thereof, and shall form a part of and be credited to the military fund of such organization. The treasurer of such county shall thereupon report the amount thereof, designating the organization to which it belongs, to the adjutant-general of the state. The amount of fines or penalties so collected from any other commissioned officers or enlisted men shall be paid, by the officer collecting the same, to the treasurer of the state.

§ 242. Violation of by-laws; expulsion.—For violation of by-laws, rules and regulations of associations organized pursuant to this chapter, enlisted men may be tried by a military court having jurisdiction; enlisted men may also be expelled from the troop, battery, company or signal corps to which they belong, by a vote of the majority of all its members, and upon such action being confirmed in orders by the commanding officer of the regiment or

battalion not part of a regiment, and in case of a troop, battery, company or signal corps, not a part of a regiment or battalion, by the commanding officer of the brigade or division to which it is attached, the name of such person shall be stricken from the roll of such troop, battery, company or corps, his certificate of membership shall be surrendered and canceled, and he shall cease to be a member of such troop, battery, company or corps, and his time of service in the same shall not be allowed.

§ 243. **Immunity of members of military court.**—No action shall be maintained against any member of a military court, or officer or agent acting under its authority, on account of the imposition of a fine or penalty or for the execution of a sentence on any person.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS.

SECTION 260. When articles of war of the United States to be in force.

261. Rules and regulations.

262. Custom and usage of the United States army.

263. Formation of associations; by-laws.

264. Security for costs in suit against officer of the state for official acts.

265. Exemption from jury duty.

§ 260. **When articles of war of the United States to be in force.**—When any portion of the military forces of this state shall be on duty under or pursuant to the orders of the commander-in-chief; or whenever any part of the state forces shall be ordered to assemble for duty in time of war, insurrection, invasion, public danger, any breach of the peace, tumult, riot or resistance to process of this state, or imminent danger thereof, the rules and articles of war, and general regulations for the government of the army of the United States, so far as they are applicable, and with such modifications as the commander-in-chief may prescribe, shall be considered in force and regarded as a part of this chapter until said forces shall be duly relieved from such duty.

No punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion or insurrection, declared by proclama-

tion of the governor to exist, and then only after the approval of the commander-in-chief of the sentence inflicting such punishment.

§ 261. Rules and regulations. — The commander-in-chief is hereby authorized to make such rules and regulations, from time to time, as he may deem expedient, but such rules and regulations shall conform to this act, and, as nearly as practicable, to those governing the United States army, and when promulgated, shall have the same force and effect as the provisions of this chapter. But the rules and regulations in force at the time of the passage of this chapter, shall remain in force until new rules and regulations are approved and promulgated.

§ 262. Custom and usage of the United States army. — All matters relating to the organization, discipline and government of the national guard, not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army.

§ 263. Formation of associations ; by-laws. — The field, staff and company officers of any regiment, or battalion not a part of a regiment, and members of any troop, battery, company, or signal corps may organize themselves into an association, of which the commanding officer shall be president, and by a vote of two-thirds of all their members, form by-laws, rules and regulations not inconsistent with this chapter, and which shall conform to the system prescribed in general regulations, and be submitted to the judge-advocate-general for his approval, and, when approved by him, such by-laws, rules and regulations shall be binding upon all commissioned officers and enlisted men therein, but they may be altered in the manner provided for their adoption, from time to time, as may be found necessary.

§ 264. Security for costs in suit against officer of the state for official acts. — When a suit or proceeding shall be commenced in any court by any person against any military officer of the state, for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceeding, to file security for the payment of costs that may be incurred by the defendant therein, and the defendant in all cases

may make a general denial, and give the special matter in evidence, and in case the plaintiff shall be nonsuited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs.

§ 265. **Exemption from jury duty.** — Every commissioned officer and every enlisted man of the national guard of this state shall be exempt from all jury duty, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required of him for the foregoing year; and every such person who shall have served for at least five years, and for the full term of his enlistment, and has been honorably discharged, shall forever after be exempt from all jury duty.

ARTICLE XV.

NAVAL MILITIA.

SECTION 280. Enrollment of reserve naval militia.

281. Naval militia to be organized.

282. Officers and petty officers of naval militia.

283. Staff officers of.

284. Election of officers and appointment of petty officers.

285. Uniform.

286. Duty required.

287. Pay for duty.

288. Rank of officers.

289. Delinquency courts.

290. Power exercised by the captain or commander-in-chief.

291. Discipline and exercise.

292. Rules and regulations.

293. Detail of United States navy officers and petty officers as instructors.

294. Armories.

295. Divisions the equivalent of companies.

296. Sections of national guard law applicable to naval militia.

§ 280. **Enrollment of reserve naval militia.** — When in conformity with article one of this chapter an enrollment of persons subject to military duty shall be made, there shall be separately enrolled and designated as naval militia in such districts as the commander-in-chief may designate, all seafaring men of whatever calling or occupation, and all men engaged in naviga-

tion of the rivers, lakes and other waters, all persons engaged in the construction and management of ships and crafts or any part thereof upon such waters, together with ship owners and their employes, yacht owners, members of yacht clubs and all other associations for aquatic pursuits, and all ex-officers and former enlisted men of the United States navy.

§ 281. **Naval militia organizations.**—As a part of the organized militia authorized by law and in addition to the national guard, there may be naval battalions organized by voluntary enlistment for the defense of the coasts, lakes and harbors. In time of peace there shall not be maintained more than four such battalions, organized as herein provided ; but the commander-in-chief shall have power in case of war, insurrection, invasion or imminent danger thereof, to increase the force beyond such limit of four battalions, and to organize the same as the exigencies of the service may require. The commander-in-chief may alter, annex, divide, consolidate or disband the naval battalions or any divisions thereof, whenever, in his judgment, the efficiency of the state service will be thereby increased.

§ 282. **Officers and petty officers of naval militia.**—The naval militia shall be commanded by a captain who shall be chosen and commissioned as soon as two battalions are completely organized. To each battalion there shall be one commander who shall command the same, one lieutenant commander to act as executive officer, who shall be next in rank and in succession to command to the commander, and one lieutenant to act as navigator. Each battalion shall consist of four divisions or companies. To each division there shall be one lieutenant to command the same, one lieutenant junior grade, two ensigns and thirty-six petty officers and seamen as a minimum, and eighty-one petty officers and seamen as a maximum. Each division shall contain at least eight men with a practical knowledge of electricity, and eight others with a practical knowledge of the construction and management of steam machinery. To each battalion and division thereof there shall be allowed such and so many petty officers as the commander-in-chief may from time to time determine.

§ 283. **Staff officers.**—The captain shall have power to nominate a staff to consist of an aide, a paymaster and a surgeon, each of the grade of lieutenant. The commanding officer of each battalion shall have power to nominate a staff to consist of a pay-

master and a surgeon, each of the grade of lieutenant junior grade, and an assistant surgeon of the grade of ensign.

§ 284. **Election of officers and appointment of petty officers.**— The captain shall be appointed by the commander-in-chief ; commanders, lieutenant commanders, and lieutenants to act as navigators, shall be chosen by the commissioned officers of their respective battalions; lieutenants, lieutenants junior grade, and ensigns, shall be chosen by the officers and enlisted men of their respective divisions. Petty officers shall be nominated, appointed and examined, and if found qualified warranted in like manner as non-commissioned officers in the national guard. The time and place of holding elections shall be fixed by the captain, if there be one, if not by the commander-in-chief, where the offices to be filled are commander, lieutenant commander, and lieutenant to act as navigator ; by the commanding officer of each battalion for the offices in the divisions of his command, and by the captain, if there be one, otherwise by the commander-in-chief, for officers in divisions not a part of a battalion. The officer fixing the time of the election shall cause written or printed notices thereof to be served on those entitled to vote thereat, at least five days prior to the time fixed for holding the same.

§ 285. **Uniform.** The uniform of the naval militia, and the insignia and designation of grade and rank, shall be prescribed by the commander-in-chief, who may change and modify the same from time to time.

§ 286. **Duty required.** The naval militia shall perform the same amount of duty in each year, as is required of the national guard, except that such duty, or any part of it, may be performed afloat.

§ 287. **Pay for duty.**— Officers and enlisted men of the naval militia shall be paid for such duty or service only, and in such amount only as by this chapter is allowed to officers and enlisted men having the same relative rank or position in the national guard, for performing like duty or service, but they shall not receive any compensation from the state for duty performed by way of instruction or drill, or otherwise, for which they receive compensation from the United States. Marshals of naval courts shall receive the same compensation for services as marshals of similar courts in the national guard.

§ 288. **Rank of officers.**—The rank given in this article is naval rank. The relative rank of officers in the naval militia and in the national guard, is as follows: Captain with colonel; commander with lieutenant-colonel; lieutenant-commander with major; lieutenant with captain; lieutenant junior grade with first lieutenant, and ensign with second lieutenant. The relative position of seamen shall be that of private in the national guard, and the relative position of petty officers in the naval militia and non-commissioned officers in the national guard, shall be determined by the commander-in-chief.

§ 289. **Delinquency courts.**—Delinquency courts for enlisted men shall be appointed by the commanding officer of each battalion for his command. An officer of the naval militia, or a judge-advocate of the national guard, may be assigned to act as judge-advocate of a general court-martial or court of inquiry. General courts-martial, courts of inquiry and delinquency courts for officers, may be wholly or partly composed of officers junior in rank to the officer to be tried or investigated, where, in the judgment of the commander-in-chief, the interests of the service so require. Boards appointed for the naval militia shall be composed of officers of such grade or rank as the commander-in-chief may determine for each occasion.

§ 290. **Powers exercised by the captain or the commander-in-chief.**—In the case of a division or company, not a part of a battalion, the powers exercisable by the commanding officer of a battalion, including the power to appoint delinquency courts for enlisted men and to nominate an assistant surgeon, shall vest in and may be exercised by the captain of the naval militia, if there be one, and if not, by the commander-in-chief.

§ 291. **Discipline and exercise.**—The system of discipline and exercise of the naval militia shall conform generally to that of the navy of the United States prescribed by congress. All matters relating to the organization, discipline and government of the naval militia, not otherwise provided for in this article or in general regulations, shall be decided by the custom and usage of the national guard if applicable, and if not applicable by the custom and usage of the United States navy.

§ 292. **Rules and regulations.**—The commander-in-chief is hereby authorized to make such rules and regulations from time to time as he may deem expedient for the government and in-

struction of the naval militia, but such regulations shall conform to this article, and as nearly as practicable to those governing the United States navy, and when promulgated they shall have the same force and effect as the provisions of this chapter. The naval militia shall be subject to the articles and regulations for the government of the United States navy, to the same extent as and under the same circumstances as members of the national guard are subject to the articles of war and regulations for the government of the United States army.

§ 293. **Detail of United States navy ; officers and petty officers as instructors.**— The commander-in-chief is authorized to apply to the president of the United States for the detail of commissioned and petty officers of the navy to act as inspectors, and instructors in the art of naval warfare.

§ 294. **Armories.**— Armories of the naval militia shall be situated immediately on or near navigable waters of the state, in such position as best to promote the efficiency of the service. The word "armory" as used in this article, and in any part of this chapter when applied to the naval militia, shall be held to include a vessel used as an armory for the purposes of instruction, drill and defense.

§ 295. **Divisions the equivalent of companies.**— The divisions in the naval militia shall be considered the equivalent of companies of the national guard, and the battalions shall be treated as battalions in the national guard not a part of a regiment.

§ 296. **Sections of national guard laws applicable to naval militia.**— All the sections of the preceding articles, not incompatible with the sections of this article, shall apply to the naval militia as well as to the national guard, but section one hundred and twenty-seven, in its application to the naval militia, is modified so that the commanding officer, the officer next in rank and the paymaster thereof shall constitute its board of audit, and in a division not a part of a battalion the three ranking officers shall constitute its board of audit.

LAWS REPEALED.

§ 300. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

Laws of	Chapter	Sections	Laws of	Chapter	Sections
1842.....	130.....	5.	1887.....	247.....	All.
1865.....	690.	All.	1887.....	330.....	All.
1865.....	744.....	All.	1887.....	611.....	All.
1866.....	610.....	All.	1887.....	649.. ..	All.
1866.....	665.....	All.	1888.....	292.....	All.
1872.....	699.....	All.	1888.....	329.....	All.
1874.....	268.....	All.	1888.....	332.	All.
1878.....	35.....	All.	1889.....	396.....	All.
1878.....	369.....	All.	1889.....	492.....	All.
1883.....	299.....	All.	1890.....	360.....	All.
1884.....	71.....	All.	1890.....	485.....	All.
1884.....	91.....	All.	1891.....	243.....	All.
1884.	305.....	All.	1891.....	261.	All.
1884.....	323.....	All.	1892.....	29.....	All.
1885.....	310.....	All.	1892.....	468.....	All.
1886.....	412.....	All.	1892.....	472.....	All.
1886.....	487.	All.	1892.....	708.....	All.

WHEN TO TAKE EFFECT.

§ 301. This chapter shall take effect immediately.

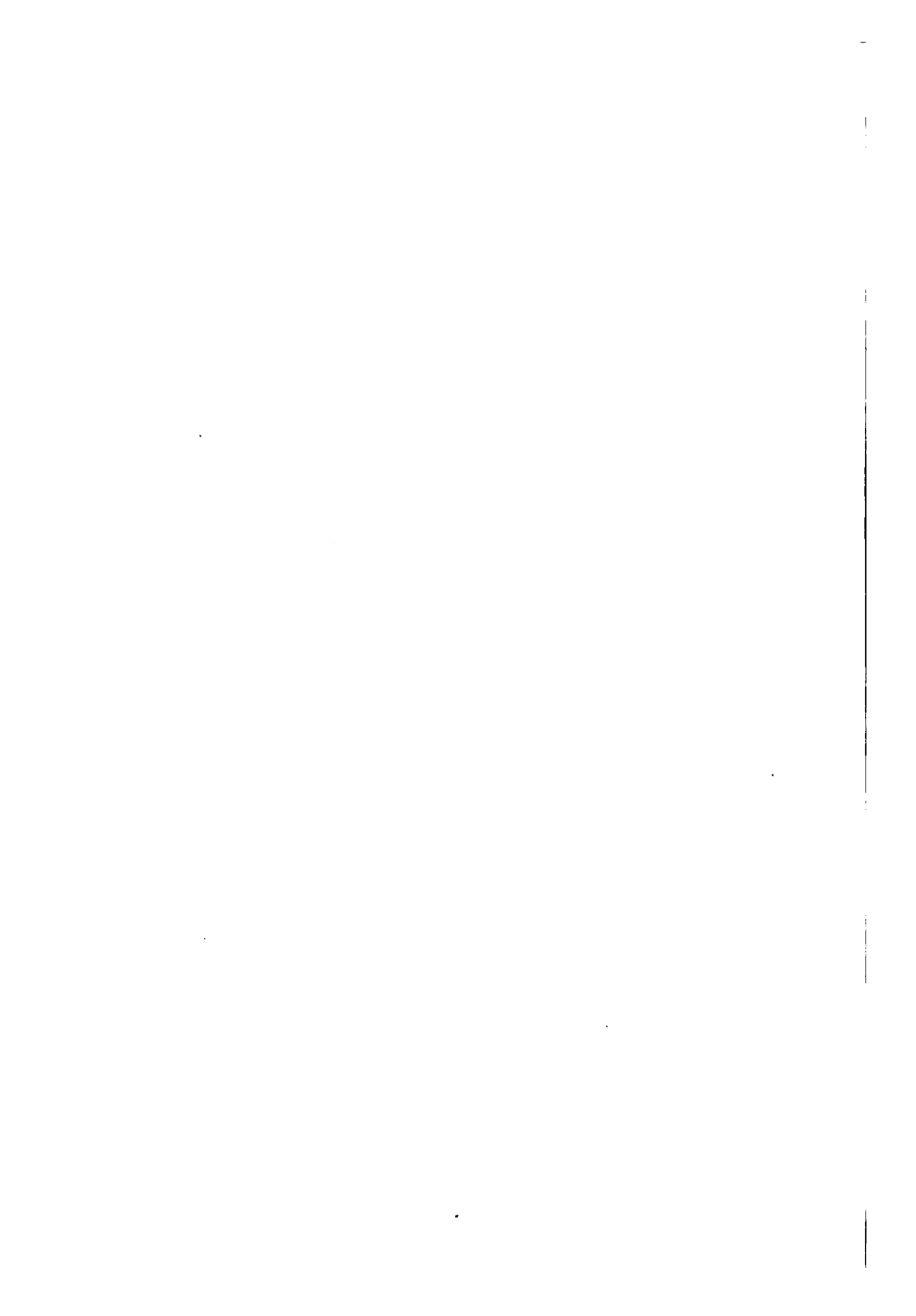
ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, D. C., *November 30, 1892.*

The following Rules and Articles of War, with amendments to date, and Kindred Statutes, with General Orders and Decisions relating thereto, are published for the information of the Army.

R. WILLIAMS,
Adjutant-General.

OFFICIAL :

Assistant Adjutant-General.



ARTICLES OF WAR.

SECTION 1342. The armies of the United States shall be governed by the following rules and articles: The word "officer," as used therein, shall be understood to designate commissioned officers; the word "soldier" shall be understood to include non-commissioned officers, musicians, artificers and privates and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court martial.

ARTICLE 1. Officers shall subscribe these articles.— Every officer now in the Army of the United States shall, within six months from the passing of this act, and every officer hereafter appointed shall, before he enters upon the duties of his office, subscribe these rules and articles.

ART. 2. Articles to be read to recruits.— These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the army.

Under the 2d Article of War the term of probation cannot be extended beyond six days. Should an applicant for enlistment refer for testimonial as to character to a party resident at such a distance from the rendezvous that a reply to an inquiry addressed to the latter cannot be expected within the time mentioned, the man should not be considered as "on probation" until reply be received, but may be informed that his application will be held in abeyance for a time.— [*General decision, Nov. 5, '90 — 14685, A. G. O., 1890. Ctr. 15, A. G. O., 1890.*]

ART. 3. Officers making unlawful enlistments.— Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years, without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

ART. 4. Discharges.— No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 5. Mustering persons not soldiers.— Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

ART. 6. Taking money on mustering.— Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster-rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 7. Returns of regiments, etc.— Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8. False returns.— Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command,

or of the arms, ammunition, clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.

ART. 9. Captured stores secured for public service. — All public stores taken from the enemy shall be secured for the service of the United States, and for neglect thereof the commanding officer shall be answerable.

ART. 10. Accountability for arms, etc. — Every officer commanding a troop, battery, or company, is charged with the arms, accoutrements, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

ART. 11. Furloughs. — Every officer commanding a regiment, or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

ART. 12. Musters. — At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent non-commissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster-rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster-rolls, shall be transmitted by the muster-

ing officer to the Department of War, as speedily as the distance of the place and muster will admit.

ART. 13. False certificates.—Every officer who signs a false certificate relating to the absence or pay of an officer or soldier, shall be dismissed from the service.

ART. 14. False muster.—Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15. Allowing military stores to be damaged.—Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16. Wasting ammunition.—Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17. Losing or spoiling accoutrements, etc.—Any soldier who sells or, through neglect, loses or spoils his horse, arms, clothing, or accoutrements shall suffer such stoppages, not exceeding one-half of his current pay, as a court-martial may deem sufficient for repairing the loss or damage, and shall be punished by confinement or such other corporal punishment as the court may direct.

Act of Congress, approved July 27, 1892; published in G. O. No. 57, A. G. O., 1892.

ART. 18. Commanders not to be interested in sale of victuals, etc.—Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other necessities of life, brought into such garrison, fort, or barrack, for the use of the soldiers, shall be dismissed from the service.

ART. 19. Disrespectful words against the President, etc.—Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United

States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20. Disrespect toward commanding officers.—Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21. Striking a superior officer.—Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 22. Mutiny.—Any officer or soldier who begins, excites, causes, or joins in any mutiny, or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23. Failing to resist mutiny.—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court martial may direct.

ART. 24. Quarrels and frays.—All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 25. Reproachful or provoking speeches.—No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended, in the presence of his commanding officer.

ART. 26. Challenges to fight duels.—No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or

accept a challenge so sent. Any soldier who so offends shall be dismissed from the service. Any officer who so offends shall suffer such punishment as a court-martial may direct.

ART. 27. Allowing persons to go out and fight; seconds and promoters.—Any officer or non-commissioned officer, commanding a guard who, knowingly and willingly, suffers any person to go forth to fight a duel, shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28. Upbraiding another for refusing challenge.—Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

ART. 29. Wrongs to officers, redress of.—Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

ART. 30. Wrongs to soldiers, redress of.—Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.

ART. 31. Lying out of quarters.— Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

ART. 32. Soldier absent without leave.— Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33. Absence from parade without leave.— Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

ART. 34. One mile from camp without leave.— Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

ART. 35. Failing to retire at retreat.— Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

ART. 36. Hiring duty.— No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37. Conniving at hiring duty.— Every non-commissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38. Drunk on duty.— Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.

ART. 39. Sentinel sleeping on post.— Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer death, or such other punishment as a court-martial may direct.

ART. 40. Quitting guard, etc., without leave.—Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41. False alarms.—Any officer who, by any means whatsoever, occasions false alarms in camp, garrison or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42. Misbehavior before the enemy, cowardice, etc.—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.

ART. 43. Compelling a surrender.—If any commander of any garrison, fortress or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

ART. 44. Disclosing watchword.—Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45. Relieving the enemy.—Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46. Corresponding with the enemy.—Whosoever holds correspondence with or gives intelligence to, the enemy either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.

ART. 47. Desertion.—Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48. Deserter shall serve full term. — Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 49. Desertion by resignation. — Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

ART. 50. Enlisting in other regiment without discharge. — No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51. Advising to desert. — Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and, in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 52. Misconduct at divine service. — It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

ART. 53. Profane oaths.— Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

ART. 54. Officers to keep good order in their commands.— Every officer commanding in quarters, garrison, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

ART. 55. Waste or spoil, and destruction of property without orders.— All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain-fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56. Violence to persons bringing provisions.— Any officer or soldier who does violence to any person bringing provisions or other necessities to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57. Forcing a safeguard.— Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

ART. 58. Certain crimes during rebellion.— In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an in-

tent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or district, in which such offense may have been committed.

ART. 59. Offenders to be delivered up to civil magistrate.—When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.

ART. 60. Certain crimes of fraud against the United States.—Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other

paper, knowing the same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any persons having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may ad-

judge. And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receive his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61. Conduct unbecoming an officer and gentleman.—Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 62. Crimes and disorders to prejudice of military discipline.—All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field officers' court-martial according to the nature and degree of the offense, and punished at the discretion of such court.

SEC. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the Sixty-second Article of War.—[*Act of Congress, approved July 27, 1892; published in G. O., No. 57, A. G. O., 1892.*]

ART. 63. Retainers of camp.—All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

ART. 64. All troops subject to articles of war.—The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the articles of war, and shall be subject to be tried by courts-martial.

ART. 65. Arrest of officers accused of crimes.—Officers charged with crimes shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

ART. 66. Soldiers accused of crimes.—Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.

ART. 67. Receiving prisoners.—No provost marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

ART. 68. Report of prisoners.—Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

ART. 69. Releasing prisoner without authority; escapes.—Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 70. Duration of confinement.—No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 71. Copy of charges and time of trial.—When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

ART. 72. Who may appoint general courts-martial.—Any general officer commanding an Army, a Territorial Division or a Department, or colonel commanding a separate Department may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the Presi-

dent; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President, for his approval or orders in the case.

Act of Congress, approved July 5, 1884; published in G. O. No. 73, A. G. O., 1884.

ART. 73. Commanders of divisions and separate brigades may appoint, in time of war.—In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.

ART. 74. Judge-advocate.—Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.

ART. 75. Members of general courts-martial.—General courts-martial may consist of any number of officers from five to thirteen inclusive, but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.

ART. 76. When requisite number not at a post.—When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 77. Regular officers, on what courts may sit.—Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.

ART. 78. Marine and Regular Army officers associated on courts.—Officers of the Marine Corps, detached for service with the army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.

ART. 79. Officers triable by general courts-martial.—Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

ART. 80. Field officers' courts.—In time of war a field officer may be detailed in every regiment, to try soldiers thereof for offenses not capital; and no soldier, serving with his regiment, shall be tried by a regimental or garrison court-martial when a field officer of his regiment may be so detailed.

ART. 81. Regimental courts.—Every officer commanding a regiment or corps shall, subject to the provisions of Article 80, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.

ART. 82. Garrison courts.—Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of Article [eighty], be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.

ART. 83. Jurisdiction of field officers', regimental and garrison courts.—Regimental and garrison courts-martial, and field officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any non-commissioned officer or soldier for a longer time than one month.

Upon conviction of offenses punishable at the discretion of courts-martial, a soldier may be sentenced to have his monthly pay, or a stated portion thereof, retained from him for such periods as the court, subject to the restrictions of the 83d Article of War, may direct. The amounts so retained will be paid only on the final statements furnished enlisted men on discharge from the service

That the proper amount of punishment is the *least* amount by which discipline can be efficiently maintained, is a principle of recognized validity in the administration of military justice. It is expected that the punishment herein authorized, while of the least possible severity, will, if judiciously applied, diminish military offenses by compelling for the time being sobriety and abstinence from vicious indulgences of every kind; and that it may thus be made a potent factor in the promotion of discipline and of the welfare of the service at large.—[G. O. No. 63, A. G. O., 1889.]

ART. 84. Oath of members of courts-martial.—The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-mar-

tial : " You, A. B., do swear that you will well and truly try and determine, according to evidence, the matter now before you. between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the Rules and Articles for the Government of the Armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases ; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

Act of Congress, approved July 27, 1892; published in G. O. No. 57, A. G. O., 1892.

ART. 85. Oath of judge-advocate.— When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form :

" You, A. B., do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 86. Contempts of court.— The court-martial may punish, at discretion, any person, who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 87. Behavior of members.— All members of a court-martial are to behave with decency and calmness.

ART. 88. Challenges by prisoner.— Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 89. Prisoner standing mute.— When a prisoner, arraigned before a general court-martial, from obstinacy and de-

liberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had pleaded not guilty.

ART. 90. Judge-advocate, prosecutor and counsel for prisoner.—The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself.

By direction of the Secretary of War it is ordered that hereafter commanding officers at posts where general courts-martial are convened shall, at the request of any prisoner who is to be arraigned, detail a suitable officer of the command as counsel to defend such prisoner. If there be no such officer available at the post the fact will be reported to the appointing authority for action.—[*G. O. No. 29, A. G. O., 1890.*]

ART. 91. Depositions.—The depositions of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.

The 91st Article of War requires that depositions which are to be used in evidence before courts-martial shall be "duly authenticated."

This implies that they shall be sworn to before some person competent to administer oaths for such purpose. Officers of the Army, as such, are not thus empowered by statute; and the only officer of the Army who can administer an oath to a witness, whose deposition is to be taken for use in evidence before a court-martial, is the officer who has qualified as the judge-advocate of the court-martial before which it is to be used. Any officer of the Army may be designated to see that the deposition is properly taken, but, with the exception mentioned, the oath must be administered and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.—[*G. O. No. 37, A. G. O., 1889. See Sec. 4 of the Act to amend the Articles of War, approved July 27, 1892, infra.*]

General Orders, No. 37, current series, from this office, on the subject of the authentication of depositions which are to be used in evidence before courts-martial, are held to interpret the 91st Article of War as to imperatively require that such depositions shall be authenticated in the manner indicated; and, hereafter, convictions based on depositions authenticated by persons not having the power to administer oaths will be disapproved.—[*W. D. Circular, July 22, 1889.*]

SEC. 4. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer

oaths for the purposes of the administration of military justice, and for other purposes of military administration. — [*Act to amend the Articles of War, approved July 27, 1892; published in G. O. No. 57, A. G. O., 1892.*]

ART. 92. Oath of witness.— All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form : “ You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.”

ART. 93. Continuances.— A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just : *Provided*, that if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.

ART. 94. Hours of sitting.— Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court, require immediate example.

ART. 95. Order of voting.— Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

ART. 96. Sentence of death.— No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.

ART. 97.— Penitentiaries.— No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.

ART. 98. Flogging.— No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

ART. 99. Discharge and dismissal of officers.— No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial ; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.

ART. 100. Publication of officers cashiered for cowardice or fraud.— When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 101. Suspension of officer's pay.— When a court-martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

ART. 102. No person tried twice for same, etc.— No person shall be tried a second time for the same offense.

ART. 103. Limitation of time of prosecution.— No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period. No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.

Act of Congress, approved April 11, 1890; published in G. O. No. 45, A. G. O., 1890.

ART. 104. Approval of sentence by officer ordering court.— No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

Act of Congress, approved July 27, 1892, published in G. O. No. 57, A. G. O., 1892.

In view of the act of Congress approved April 11, 1890, amending the 103d Article of War, a release from the army will be furnished, upon application, to each deserter coming within the provisions of the act.

The applicant will be required to file an affidavit stating whether he has

absented himself from the United States while in desertion, and if it shall appear from the affidavit, or otherwise, that he has so absented himself, the time of his absence will be deducted from the two years' limitation. — [*G. O. No. 55, A. G. O., 1890.*]

When a deserter surrenders or is delivered at a military post, the post commander shall, in addition to the physical examination required by paragraph 121 of the Regulations, cause immediate inquiry to be made in regard to his date of enlistment, desertion, etc., and if he finds that the trial of the deserter is barred by the 103d Article of War, as amended by the act of April 11, 1890, he will prepare the affidavit required by General Orders, No. 55, of 1890, from this office, and, after obtaining the oath of the deserter to the same, immediately set him at liberty with instructions to apply by letter to the Adjutant General of the Army for a "deserter's release." The post commander will then report his action to this office, transmitting with report the affidavit above mentioned. — [*Decision Sec. War, Mar. 21, '91—3468 A. G. O., 1891, Cir. 3, A. G. O., 1891.*]

ART. 105. Confirmation of death sentence. — No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

ART. 106. Confirmation of dismissals in time of peace. — In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 107. Dismissal by division or brigade courts. — No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.

ART. 108. General officers, sentences respecting. — No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 109. Confirmation by officer ordering court. — All sentences of a court-martial may be confirmed and carried into execu-

tion by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department, is not required by these articles.

ART. 110. Confirmation of field officers' sentences. — No sentence adjudged by a field officer, detailed to try soldiers of his regiment, shall be carried into execution until the same shall have been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.

Act of Congress, approved July 27, 1892; published in G. O. No. 57, A. G. O., 1892.

ART. 111. Suspension of sentences of death or dismissal. — Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.

ART. 112. Pardon and mitigation of sentences. — Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.

Paragraph 1014, Army Regulations, 1889.

ART. 113. Proceedings forwarded to judge-advocate-general. — Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.

ART. 114. Party entitled to a copy. — Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

ART. 115. Courts of inquiry, how ordered.—A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but as courts of inquiry may be perverted to dishonorable purposes, and may be employed in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

ART. 116. Members of court of inquiry.—A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.

ART. 117. Oaths of members and recorder of court of inquiry.—The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: so help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: so help you God."

ART. 118. Witnesses before courts of inquiry.—A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martial, and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.

ART. 119. Opinion, when given by.—A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

ART. 120. Authentication of proceedings of court of inquiry.—The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

ART. 121. Proceedings of court of inquiry used as evidence.—The proceedings of a court of inquiry may be admitted as evi-

dence by a court-martial, in cases not capital, nor extending to the dismissal of an officer: *Provided*, that the circumstances are such that oral testimony cannot be obtained.

ART. 122. Command when different corps happen to join.—If, upon marches, guards, or in quarters, different corps of the army happen to join or do duty together, the officer highest in rank of the line of the army, marine corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.

ART. 123. Regular and volunteer officers on same footing as to rank, etc.—In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.

ART. 124. Rank of militia officers on duty with officers of regular or volunteer forces.—Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.

ART. 125. Deceased officers' effects.—In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War an inventory thereof.

ART. 126. Deceased soldiers' effects.—In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127. Effects of deceased officers and soldiers to be accounted for.—Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.

ART. 128. Articles of war to be published once in six months to every regiment, etc.—The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

SEC. 1343. Spies.—All persons who, in time of war or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death.

STATUTORY PROVISIONS IN THE NATURE OF ARTICLES OF WAR.

SEC. 1202, R. S. Every judge-advocate of a court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of criminal jurisdiction within the state, territory, or district where such military courts shall be ordered to sit, may lawfully issue.

SEC. 1203, R. S. The judge-advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before, such court, and may set down the same, in the first instance, in shorthand. The reporter shall, before entering upon his duty, be sworn or affirmed, faithfully to perform the same.

The following forms for the oaths of the reporter and the interpreter of a court martial are approved.

For the reporter: "You swear that you will faithfully perform the duties of reporter to this court. So help you God."

For the interpreter: "You swear that you will truly interpret in the case now in hearing. So help you God."—[*Decision Actg. Sec. War, Sept. 30, '92*—38906 A. G. O., 1892. Cir. 12 A. G. O., 1892.]

SEC. 1228, R. S. No officer of the Army who has been or may be dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment confirmed by the Senate

SEC. 1239, R. S. The President is authorized to drop from the rolls of the Army for desertion any officer who is absent from duty three months without leave; and no officer so dropped shall be eligible for reappointment. And no officer in the military or naval service shall, in time of peace, be dismissed from service, except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.

SEC. 1230, R. S. When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.

SEC. 1326, R. S. The Superintendent of the Military Academy shall have power to convene general courts martial for the trial of cadets, and to execute the sentences of such courts, except the sentences of suspension and dismissal, subject to the same limitations and conditions now existing as to other general courts-martial.

The three sections next following relate to offenses committed at the Military Prison at Fort Leavenworth, Kansas:

SEC. 1359, R. S. Any officer who shall suffer a convict to escape, or shall in any way consent to his escape, or shall aid him to escape, or in an attempt to escape, shall be dismissed from the service, and suffer such other punishment as a court-martial may inflict.

SEC. 1360, R. S. Any soldier or other person employed in the prison who shall suffer a convict to escape, or shall in any way consent to his escape, or shall aid him to escape, or in an attempt to escape, shall, upon conviction by a court-martial, be confined therein not less than one year.

SEC. 1361, R. S. All prisoners under confinement in said military prisons undergoing sentence of courts-martial shall be liable to trial and punishment by courts-martial under the rules and articles of war for offenses committed during the said confinement.

SEC. 1621, R. S. The Marine Corps, * * * when detached for service with the Army, by order of the President, * * * shall be subject to the rules and articles of war prescribed for the government of the Army.

SEC. 1658, R. S. Courts-martial for the trial of militia shall be composed of militia officers only.

SECS. 1996, 1998, R. S. Every person who hereafter deserts the military (or naval) service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military (or naval) service, lawfully ordered, shall be deemed to have voluntarily relinquished and forfeited his right of citizenship, as well as his right to become a citizen; and such person shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of a citizen thereof.

Act of March 3, 1877, Ch. 102, Sec. 1. Hereafter the records of regimental, garrison, and field officers' courts-martial, shall after having been acted upon, be retained and filed in the Judge-Advocate's office at the Headquarters of the Department Commander in whose department the courts were held for two years, at the end of which time they may be destroyed.

Act of March 16, 1878, Ch. 37. In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States Courts, Territorial Courts, and Courts-martial and Courts of Inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

AN ACT to promote the administration of justice in the Army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter in time of peace all enlisted men charged with offenses now cognizable by a garrison or regimental court-martial shall, within twenty-four hours from the time of their arrest, be brought before a summary court, which shall consist of the line officers* second in rank at the post or station or of the command of the alleged offender, and at stations where only officers of the staff are on duty the officers second in rank shall constitute such court, who shall have power to administer oaths and to hear and determine the case, and when satisfied of the guilt of the accused party adjudge the punishment to be inflicted. There shall be a

**Sic* in the roll.

summary court record-book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be entered a record of all cases heard and determined and the action had thereon, and no sentence adjudged by said summary court shall be executed until it shall have been approved by the post or other commander: *Provided*, That when but one commissioned officer is present with a command he shall hear and finally determine such cases as require summary action: *Provided, further*, That the President be, and he hereby is, authorized to prescribe specific penalties for such minor offenses as are now brought before garrison and regimental courts-martial: *Provided, further*, That any enlisted man charged with an offense and brought before such summary court may, if he so desires, object to a hearing and determination of his case by such court and request a trial by court-martial, which request shall be granted as of right, and when the court is the accuser the case shall be heard and determined by the post commander, or by regimental or garrison court-martial: *And provided, further*, That post and other commanders shall, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which reports shall be filed in the office of the judge-advocate of the department. * * *

Approved October 1, 1890.

AN ACT to amend an act entitled "An act to promote the administration of justice in the Army," approved October first, eighteen hundred and ninety.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to promote the administration of justice in the Army," approved October first, eighteen hundred and ninety, be, and the same is hereby, amended by adding thereto the following section:

"SEC. 3. That the commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same."

Approved July 27, 1892.

NOTES.

When charges are preferred against enlisted men for offenses heretofore cognizable by garrison or regimental court-martial, they will be laid before the post commander, who will cause the accused to be brought before the summary court within the statutory time. Here they will be arraigned and allowed to plead, according to the practice of courts-martial. If an accused does not demand a removal of his case to a regimental or garrison court-martial, or if, being a sergeant, he does not object to trial by inferior court-martial, or if he does not object to be tried by the officer second in rank on the ground of his being the accuser, or if he does not plead guilty, witnesses will be sworn and testimony heard, the accused being permitted to testify and make a statement in defense; but the evidence and statement will not be recorded.

When the summary court shall have arrived at a finding and judgment, the "summary court record" book, with the entries therein made in accordance with the headings to its columns, will be laid before the post commander for his action, which also will be entered in the record book, dated and signed. When a case is heard by the post commander, the proceedings will be recorded in the same book. No other record of the proceedings will be kept.

Post commanders will furnish company and other commanders extracts from the "summary court record" of the trials of men of their commands, to enable them to make the proper record in company books and on rolls and returns.

The trials of men before summary courts will not be published in orders.

The following form for the "summary court record" book has been adopted, and will be furnished by the Adjutant-General of the Army, with blank forms of reports required to be made monthly to department headquarters:

Summary Court Record.

No.	Name, rank, company and regiment.	Charges and specifications.	Names of witnesses.	When arrested.	When arraigned.	Plea.	Finding.	Sentence, with signature of trial officer.	Action of commanding officer, with date and signature.

—[G. O. 137, A. G. O., 1890.]

The specifications of charges tried by summary court may be recorded in the "summary court record" in abbreviated form; but, taken in connection with the charge, must set forth material facts, together with the date of offense. For instance, under a charge of "Absence without leave," it will be

sufficient if the record should state, "From 10 a. m. to 10 p. m., October 10, 1892," or under a charge of "Drunkenness on duty," to state, "At drill, October 10, 1892." — [*Decision Actg. Sec. War, Sep. 29, '92* — 83906 *A. G. O.*, 1892. *Cir. 12, A. G. O.*, 1892.]

The necessary summary court writing can be done through the "necessary clerks in the adjutant's office," as authorized by General Orders, No. 129, of 1890, from this office. In that way a clerk can be supplied "when actually required." — [*Decision Maj. Gen. Comdg. Army Jan. 21, '91* — 865 *A. G. O.*, 1891. *Cir. 1, A. G. O.*, 1891.]

Whenever, under the provisions of the summary court act, it becomes legal to convene a garrison or regimental court-martial, the order appointing the court must state the fact which brings the case within the exceptions of the law substituting the summary court for the garrison and regimental court-martial, and thus makes it a legal court. — [*Decision Actg. Sec. War, July 18, '91* — 12050 *A. G. O.*, 1891 — *Circular 9, A. G. O.*, 1891.]

The fact that the number of trials by inferior court-martial has greatly increased since the establishment of the summary court indicates that officers of the Army have the impression that under the present system they must bring every dereliction of duty before a court for trial, and that they are allowed no discretion in the matter. This is a mistake. Their discretion is the same now as it was under the garrison court system, and they are not obliged to bring cases before the summary court which they believe ought to be disposed of with an admonition or the withholding of privileges or indulgences. The extent of the exercise of this discretion, within these limits, is subject to the control of the commanding officer. — [*Decision Actg. Sec. War, Nov. 14, '91* — 19136 *A. G. O.*, 1891 — *Circular 13, A. G. O.*, 1891.]

Summary courts are subject to the restrictions of the 83d Article of War. Under this article inferior courts-martial can award forfeiture of one month's pay. This is the limit of the jurisdiction. The amount retained as "retained pay" is a part of the month's pay, and as the jurisdiction of the inferior court extends to the forfeiture of the whole of a month's pay, it must extend to that part of it which is retained. Retained pay forfeited by sentence of courts-martial will be deducted from the pay of the soldier on his final statements. — [*Decision Actg. Sec. War* — 11011 *A. G. O.*, 1891 — *Cir. 1, A. G. O.*, 1892.]

The extent of the jurisdiction of the summary court is determined by the 83d Article of War, under which it cannot "inflict a fine exceeding one month's pay." A forfeiture exceeding that amount would be illegal, but "detention" is not forfeiture or fine. By the latter the man loses his money entirely; by the former he only loses the use of it for a time, and therefore in establishing the measure of punishments announced in General Orders, No. 21, of 1891, Adjutant General's Office, it was decided that the equivalent of forfeiture of pay should be detention of pay of four times the amount of the forfeiture; so that in awarding a detention of four months' pay a summary court would be awarding a sentence which would be equivalent to a forfeiture of one month's pay, and would therefore be within the limit of the 83d Article of War. — [*Decision Actg. Sec. War, Aug. 22, '92* — 36529 *A. G. O.*, 1892 — *Circular 10, A. G. O.*, 1892.]

* * * Second, it is held that an officer cannot act as accuser and court in the same case; and when the post or other commander is the accuser, and the only officer present, the case must necessarily go to a regimental or garrison court-martial. This is not confined to offenses committed in the presence of the court.—[*Decision War Dept.*, Jan. 19, '91—17217 A. G. O., 1890—*Circular 1*, A. G. O., 1891.]

The names of the officers at a post who act as summary court must be reported on the post return, with dates.—[*General Decision*, Feb. 28, '91—3142 A. G. O., 1891.]

It is held that summary courts should be open at a stated hour every morning, except Sunday, for the trial of such cases, if any, as may properly be brought before them. Trials should be had on Sunday only when the exigencies of the service make it necessary. The jurisdiction of the court is not affected by the time when cases are brought before it. It is the province of the commanding officer, and not of the court, to determine when and what cases shall be brought before it for trial. A delay of more than twenty-four hours does not make the action of the court void or voidable. The law does not "declare that trials shall take place within twenty-four hours after the commission of the offense," but it provides for trial within twenty-four hours from time of arrest. Whether arrest shall immediately follow the commission of the offense is wholly within the discretion of the officer in command.—[*Decision Sec. War*, Mar. 2, '91—1910 A. G. O., 1891—*Circular 2*, A. G. O., 1891.]

In connection with the decision of the Secretary of War of March 2, 1891, published in paragraph IV, Circular No. 2, March 10, 1891, from this office, the following is published for the information and guidance of all concerned:

Delay in the trial of a soldier by summary court does not invalidate the proceedings of the court. The time of trial does not affect the legality. The commanding officer, and not the court, is responsible for bringing the accused to trial at the proper time. A delay in time of trial is not a matter of defense. It cannot be pleaded in bar or abatement. If, however, the accused has been long in confinement awaiting trial, it may be proper to place the fact in evidence in mitigation of punishment, and for that purpose only. If the finding is "guilty," the court may be inclined to give a lighter sentence, in view of the fact that the accused has already been punished by confinement.—[*Decision Act. Sec. War*, Jan. 5, '92—22138, A. G. O., 1891—*Circular 2*, A. G. O., 1892.]

Whenever, in determining on its sentence, a summary court shall take into consideration previous convictions, a note of the number of such previous convictions will be made on the summary court record.—[*Decision Sec. War*, May 27, '91—7623 A. G. O., 1891—*Circular 5*, A. G. O., 1891.]

It is the duty of the officer who brings charges before a summary court for trial to submit evidence of previous convictions, or to cite them when the convictions have been by the same court. But when evidence of previous convictions is not thus submitted or cited, the officer acting as the court may take judicial knowledge of what appears upon the records of his own court.—[*Decision Sec. War*, Jan. 22, '92—23750 A. G. O., 1892—*Circular 2*, A. G. O., 1892.]

Under paragraph 1018, Army Regulations, as amended by General Orders, No. 29, March 10, 1891, from this office, the proper proof of previous convictions by summary court is by authenticated extract from the summary court record, giving: Name, rank, company, and regiment; charge and specification; plea; finding; sentence; and action of commanding officer, with date. —[*Decision War Dept.*, Oct. 19, '91—18074 A. G. O., 1891—Circular 12, A. G. O., 1891.]

AN ACT to promote the administration of justice in the Army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 2. That it shall be lawful for any civil officer having authority under the laws of the United States or of any state, territory, or district, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government.

Approved October 1, 1890.

A reward of sixty dollars will be paid to any civil officer having authority under the laws of the United States or of any state, territory, or district, to arrest offenders, for the arrest and the delivery to the proper military authority at a military station (or at some convenient point as near thereto as can be agreed upon) of any soldier who deserted subsequently to December 31, 1893, and is liable, under existing law, to trial and punishment for desertion. This reward will be paid by the Quartermaster's Department in full satisfaction of all expenses for arresting, keeping, and delivering, and its payment will be reported to the commander of the company or detachment to which the deserter may belong.—[*G. O. No. 145, A. G. O., 1890.*]

AN ACT to amend the Articles of War, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 2. That whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court.

In view of the requirement of section 2 of the act of July 27, 1892, "to amend the Articles of War," etc., the following forms for recording the closing and reopening of a court-martial are approved:

1. In case of a challenge:

"The challenged member, accused, and judge-advocate then withdrew and the court was closed, and on being opened the president announced, in their presence," etc.

2. On an interlocutory question, same as foregoing, omitting "challenged member."

3. On the finding :

"The accused and judge-advocate then withdrew and the court was closed and finds the accused, Private.....

Company..... U. S. Infantry:

"Of the 1st Specification," etc.

"The judge-advocate and accused were then recalled and the court opened," etc.

4. On the sentence :

"The accused and judge-advocate then withdrew and the court was closed, and sentences him, Private.....

Company..... U. S. Infantry,.....

"The judge-advocate was then recalled.

".....
"President.

".....
"Judge-advocate."

[*Decision Actg. Sec. War*, Sept. 30, '92—38906 A. G. O., 1892—*Circular 12*, A. G. O., 1892.]

Although, since the passage of the act of Congress of July 27, 1892, "to amend the Articles of War," etc., it is desirable that the record of a court-martial should show that when it sat in closed session the judge-advocate withdrew, (for which reason forms are given in Circular No. 12, A. G. O., 1892,) it will not vitiate the proceedings if this is not expressly stated. When the record shows that the court was "closed" the presumption is that it was closed in accordance with the requirements of the law.—[*Decision Actg. Sec. War*, October 10, 1892, *Circular 13*, A. G. O., 1892.]

SEC. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the sixty-second Article of War.

In connection with the third section of the act of July 27, 1892 amending the Articles of War, etc., declaring "fraudulent enlistment and the receipt of any pay or allowance thereunder" a military offense, "punishable by court-martial under the 62d Article of War" (General Orders, No. 57, Adjutant-General's Office, 1892), the Acting Secretary of War decides that such offenses shall be brought before a general court-martial.—[16347 A. G. O., 1890.]

"A fraudulent enlistment is an enlistment procured by means of a willful misrepresentation in regard to a qualification or disqualification for enlistment, or by an intentional concealment of a disqualification, which has had the effect of causing the enlistment of a man not qualified to be a soldier, and who but for such false representation or concealment would have been rejected."—[*Act. Judge-Adv. Gen.*, Oct. 24, 1892.]

SEC. 4. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration.

SEC. 5. That the commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same.

SEC. 6. That this act shall take effect sixty days after its passage.

Approved July 27, 1892.

AN ACT to amend the Articles of War relative to the punishment on conviction by courts-martial.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the court-martial the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

Approved September 27, 1890.

GENERAL ORDERS, {
No. 21. }

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, *February 27, 1891.*

The following order has been received from the President and is published for the information and guidance of all concerned:

EXECUTIVE MANSION,
WASHINGTON, D. C., *February 26, 1891.* }

In accordance with an act of Congress approved September 27, 1890, the following limits to the punishment of enlisted men, together with the accompanying regulations, are established for the government in time of peace of all courts-martial, and will take effect thirty days after the date of this order:

I — Subject to the modifications authorized in subdivision three of this section, the punishment for desertion shall not exceed the following:

1. In the case of a soldier who surrenders —

(a) When such surrender is made within thirty days after desertion, confinement at hard labor, with forfeiture of pay and allowances, for three months.

(b) When such surrender is made after an absence of more than thirty days and not more than ninety days, confinement at hard labor, with forfeiture of pay and allowances, for six months.

(c) When such surrender is made after an absence of more than ninety days, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for eighteen months; provided, that in the case of a deserter who had not been more than three months in the service, the confinement shall not exceed ten months.

2. In the case of a soldier who does not surrender—

(a) When at the time of desertion he shall have been less than three months in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for one year.

(b) When at the time of desertion he shall have been three months or more but less than six months in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for eighteen months.

(c) When at the time of desertion he shall have been six months or more in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for two years and six months.

3. The foregoing limitations will be subject to modification under the following conditions:

(a) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion, and also by dishonorable discharge and forfeiture of all pay and allowances when not already authorized.

(b) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians or of any unlawful assemblage which the troops may be opposing, shall not exceed dis-

honorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

Wherever in General Orders, No. 21, February 27, 1891, from this office, the limit of the punishment of a deserter is regulated by the length of time he has been "in the service," this expression has reference not only to the soldier's present enlistment, but to all previous enlistments as well, service in the Navy and Marine Corps included—in other words, to the aggregate of his service.—[*Decision War Dept.*, Oct. 3, '91—17390 A. G. O., 1891—*Circular* 11, A. G. O., 1891.]

When a sentence of confinement or forfeiture is in excess of the legal limit, that part of it which is within the limit is legal, and may be approved and carried into execution.—[*Decision Actg. Sec. War*, Sept. 13, '92, *modifying the paragraph under head of "Forfeiture of Pay."* on page 3, *Cir. No. 3*, series of 1893, A. G. O.—36929 A. G. O., 1892—*Circular* 12, A. G. O., 1892.]

By the *surrender* of a deserter, as the word is used in General Orders, No. 21, February 27, 1891, from this office, is meant a surrender in good faith. A surrender in order to share in the reward paid for apprehension, or because apprehension cannot be avoided, or for any fraudulent purpose, is not to be treated as a "surrender" within the meaning of the order.—[*Decision Actg. Sec. War*, Dec. 23, '91—22033 A. G. O., 1891—*Circular* 1, A. G. O., 1892.]

II — Except as herein otherwise indicated punishments shall not exceed the limits prescribed in the following table :

Offenses.	Limit of punishment.
UNDER 17TH ARTICLE OF WAR.	
Selling horse or arms, either or both..	Three years' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Selling accouterments.....	Four months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Selling clothing	Two months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Losing or spoiling horse or arms through neglect.	Four months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Losing or spoiling accouterments or clothing through neglect.	One month's confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect toward his commanding officer.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusing to obey or using violence to officer or non-commissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances and imprisonment for two years.

Offenses.	Limit of punishment.
UNDER 31ST ARTICLE OF WAR.	
Lying out of quarters.....	Forfeiture of \$2; corporal, \$3; sergeant, \$4.
* UNDER 32D ARTICLE OF WAR.	
<i>Absence without leave—</i>	
Less than one hour (not including absence from a roll-call).	Forfeiture of 50 cents; corporal, \$1; sergeant, \$2.
Less than one hour (including absence from a roll-call).	Forfeiture of \$1; corporal, \$2; sergeant, \$3; 1st sergeant or non-commissioned officer of higher grade, \$4.
From one to six hours.....	Forfeiture of \$2; corporal, \$3; sergeant, \$4; 1st sergeant or non-commissioned officer of higher grade, \$5.
From six to twelve hours.....	Forfeiture of \$3; corporal, \$4; sergeant, \$6; 1st sergeant or non-commissioned officer of higher grade, \$7.
From twelve to twenty-four hours.....	Forfeiture of \$5; corporal, \$6; sergeant, \$7; 1st sergeant or non-commissioned officer of higher grade, \$10.
From twenty-four to forty-eight hours.	Forfeiture of \$6 and five days' confinement at hard labor. For corporal, forfeiture of \$8; sergeant, \$10; 1st sergeant or non-commissioned officer of higher grade, \$12, or, for all non-commissioned officers, reduction.
From two to nine days.....	Forfeiture of \$10 and ten days' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
From ten to twenty-nine days.....	Forfeiture of \$20 and one month's confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
From thirty to ninety days.....	Three months' confinement at hard labor and forfeiture of \$10 per month for same period; for non-commissioned officer, reduction in addition thereto.
For more than ninety days.....	Dishonorable discharge and forfeiture of all pay and allowances and three months' confinement at hard labor.
UNDER 33D ARTICLE OF WAR.	
<i>Failure to repair at the time fixed, etc., to the place of parade—</i>	
For reveille or retreat roll-call.....	Forfeiture of 50 cents; corporal, \$1; sergeant, \$2; 1st sergeant, \$3.
For guard detail.....	Forfeiture of \$5; corporal, \$8; sergeant, \$10.
For fatigue detail.....	
For dress parade.....	
For the weekly inspection.....	
For target practice.....	Forfeiture of \$2; corporal, \$3; sergeant, \$5.
For drill.....	
For guard mounting (by musician)....	
For stable duty.....	

* WAR DEPARTMENT, November 20, 1891.

By direction of the President, General Orders, No. 21, February 27, 1891, Headquarters of the Army, Adjutant-General's Office, shall not hereafter be construed as impairing or modifying paragraph 125 of the Army Regulations as amended by General Orders, No. 38, March 23, 1890, from the same headquarters.

L. A. GRANT,
Acting Secretary of War.

(G. O. 92, A. G. O., 1891.)

Offenses.	Limit of punishment.
UNDER 38TH ARTICLE OF WAR.	
<i>Drunkenness on—</i>	
Guard	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Duty as company cook.....	Forfeiture of \$10.
Extra or special duty	Forfeiture of \$6. For non-commissioned officer, reduction and forfeiture of \$10.
At drill	
At target practice	
At parade	
At inspection	
At inspection of company guard detail.	
At stable duty.....	
UNDER 40TH ARTICLE OF WAR.	
Quitting guard	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
UNDER 51ST ARTICLE OF WAR.	
Persuading soldiers to desert.....	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
UNDER 60TH ARTICLE OF WAR.	
UNDER 62D ARTICLE OF WAR.	
Manslaughter	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
Assault, with intent to kill	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' imprisonment.
Burglary	Dishonorable discharge, forfeiture of all pay and allowances, and five years' imprisonment.
Forgery	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
Perjury	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
False swearing	Dishonorable discharge, forfeiture of all pay and allowances, and two years' imprisonment.
Robbery.....	Dishonorable discharge, forfeiture of all pay and allowances, and six years' imprisonment.
<i>* Larceny or embezzlement of property—</i>	
Of the value of more than \$100.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
Of the value of \$100 or less and more than \$50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' imprisonment.
Of the value of \$50 or less and more than \$20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' imprisonment.

* In specifications to charges of larceny or embezzlement the value of the property shall be stated.

Offenses.	Limit of punishment.
UNDER 62D ARTICLE OF WAR — CON. Of the value of \$20 or less	Dishonorable discharge, forfeiture of all pay and allowances, and one year's imprisonment.
Disobedience of orders, involving willful defiance of the authority of a non-commissioned officer in charge of a guard or party.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a non-commissioned officer while in the execution of his office.	One month's confinement at hard labor and forfeiture of \$10; for non-commissioned officer, reduction in addition thereto.
Absence from fatigue duty	Forfeiture of \$4; corporal, \$5; sergeant, \$6.
Absence from extra or special duty ...	Forfeiture of \$4; corporal, \$5; sergeant, \$6.
Absence from duty as company or hospital cook.	Forfeiture of \$10.
Introducing liquor into post or camp in violation of standing orders.	Forfeiture of \$3. For non-commissioned officer, reduction and forfeiture of \$5.
Drunkenness at post or in quarters.	Forfeiture of \$3. For non-commissioned officer, reduction and forfeiture of \$5.
Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within ten miles of his station.	Forfeiture of \$10 and seven days' confinement at hard labor. For non-commissioned officer, reduction and forfeiture of \$12.
Noisy or disorderly conduct in quarters.	Forfeiture of \$4; corporal, \$7; sergeant, \$10.
Abuse by non-commissioned officer of his authority over an inferior.	Reduction, three months' confinement at hard labor, and forfeiture of \$10 per month for the same period.
Non-commissioned officer encouraging gambling.	Reduction and forfeiture of \$5.
Non-commissioned officer making false report.	Reduction, forfeiture of \$3, and ten days' confinement at hard labor.
Sentinel allowing a prisoner under his charge to escape through neglect.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period.
Sentinel willfully suffering prisoner under his charge to escape.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's imprisonment.
Sentinel allowing a prisoner under his charge to obtain liquor.	Two months' confinement at hard labor and forfeiture of \$10 per month for the same period.
Sentinel or member of guard drinking liquor with prisoners.	Two months' confinement at hard labor and forfeiture of \$10 per month for the same period.
Disrespect or affront to a sentinel	Two months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Lewd or indecent exposure of persons.	Three months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.

III—(1.) When a soldier shall be found guilty of an offense cognizable when committed for the first time by an inferior court-martial his punishment therefor may exceed the prescribed limit by one-half, if it shall appear that during his current enlistment

and within two years preceding his trial he has been once convicted of one offense or more; it may be doubled if he has been twice so convicted; and it may be increased by one-half of the prescribed limit for every such previous conviction, provided that upon proof of five or more previous convictions, the punishment may be that authorized for a fifth conviction or dishonorable discharge, with forfeiture of all pay and allowances. When found guilty of an offense cognizable only by a general court-martial, and on proof of five or more previous convictions within the two years, dishonorable discharge, with forfeiture of all pay and allowances, may be added to any confinement at hard labor. And when a non-commissioned officer shall be found guilty of an offense not punishable by reduction, reduction may be added to the punishment if it shall appear that he has been convicted of a military offense within one year and during his current enlistment.

(2.) After arriving at the findings, a court-martial may be opened to receive evidence of previous convictions. These convictions must be proved by the records of previous trials, or by duly authenticated orders promulgating the same, showing the actual offenses of which the soldier was convicted, except in the cases of convictions by summary court, when a duly authenticated copy of the record of said court shall be deemed sufficient proof. Charges forwarded to the authority ordering a general court-martial or submitted to a summary, garrison, or regimental court, must be accompanied by the proper evidence of such previous convictions as may have to be considered in determining upon a sentence. Paragraphs 1017 and 1018 of the Regulations are superseded by this order.

In every case when an offense on trial before a court-martial is of a character admitting of the introduction of evidence of previous convictions, and the accused is convicted, the court, after determining its findings, will be opened for the purpose of ascertaining whether there is such evidence, and, if so, of hearing it. These convictions must be proved by the records of previous trials, or by duly authenticated orders promulgating the same, showing the actual offenses of which the soldier was convicted, except in the cases of conviction by summary court, when a duly authenticated copy of the record of said court shall be deemed sufficient proof. Charges forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison, or regimental court, must be accompanied by the proper evidence of such previous convictions as may have to be considered in determining upon a sentence. [*G. O. No. 64, A. G. O., 1892.*]

General Orders, No. 21, February 27, 1891, from this office, does not limit the introduction of evidence of previous conviction to cases when soldiers are

on trial for offenses mentioned in the order, but does subject it to certain other limitations. When a soldier is on trial for desertion evidence of previous desertions may go to increase his term of imprisonment; and so when on trial for an offense which, when committed for the first time, would be cognizable by an inferior court-martial, the punishment may be increased, in regular proportion, in view of previous convictions. But with these exceptions evidence of previous convictions can only be introduced under the following conditions: first, the trial must be for an offense not ordinarily punishable with dishonorable discharge; second, there must be at least five previous convictions; third, the only additional punishment that can be awarded in consequence of the introduction of such evidence is dishonorable discharge with forfeiture of pay and allowances.—[*Decision Sec. of War, May 25, '91—8033 A. G. O., 1891. Circular 5, A. G. O., 1891.*]

By the third section, paragraph 1, of General Orders, No. 21, Adjutant-General's Office, 1891, it is prescribed that the punishment for an offense cognizable when committed for the first time by an inferior court-martial may, upon proof of five or more previous convictions, be three times as great as the maximum limit of punishment for the offense when committed for the first time; or, in lieu of it, "dishonorable discharge, with forfeiture of all pay and allowances." This latter punishment, if awarded at all, must be awarded in its entirety; it is a single substitute which the order provides for the sentence which might otherwise be awarded. The court has no authority to award a punishment less than dishonorable discharge with forfeiture of all pay and allowances, but in excess of the limit before prescribed.—[*Decision Sec. War, Sept. 1, '92—87320 A. G. O., 1892. Cir. 12, A. G. O., 1892.*]

IV — This order prescribes the *maximum* limit of punishment for the offenses named, and this limit is intended for those cases where the severest punishment should be awarded. In other cases the punishment must be graded down according to the extenuating circumstances. Offenses not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

V — Summary courts are subject to the restrictions named in the 83d Article of War. Soldiers against whom charges may be preferred for trial by summary court shall not be confined in the guard-house, but shall be placed in arrest in quarters, before and during trial and while awaiting sentence, unless in particular cases restraint may be deemed necessary.

VI — The following substitutions for punishments named in section II of this order are authorized at the discretion of the court :

Detention of pay to the extent of four times the amount of the forfeiture; two days' confinement at hard labor for one dollar of

forfeited pay ; one day's solitary confinement on bread and water diet for two days' confinement at hard labor or for one dollar of forfeited pay ; provided that a non-commissioned officer not sentenced to reduction shall not be subject to confinement ; and provided that solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year. Wherever the limit herein prescribed for an offense or offenses may be brought within the punishing power of inferior courts-martial, as defined by the 83d Article of War, by substitution of punishment under the provisions of this section, the aforesaid courts shall be deemed to have jurisdiction of such offense or offenses.

Section VI of General Orders, No. 21, Adjutant-General's office, 1891, authorizes only the substitutions of punishment therein mentioned, and does not authorize the reverse of the specified substitutions.—[*Decision Secretary of War*, Sept. 13, '92—36929, A. G. O., 1892. Cir. 12, A. G. O., 1892.]

VII—Sergeants shall not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial, without the authority of the officer competent to order their trial by general court-martial ; nor shall sergeants of the post non-commissioned staff be reduced, but they may be dishonorably discharged whenever reduction is included in the limit of punishment. Paragraphs 105 and 254 of the Regulations, the latter as amended by General Orders, No. 67, series of 1890, Adjutant-General's office, are modified accordingly.

BENJAMIN HARRISON.

BY THE PRESIDENT :

REDFIELD PROCTOR,

Secretary of War.

BY COMMAND OF MAJOR-GENERAL SCHOFIELD :

J. C. KELTON,

Adjutant-General.

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